

European network of legal experts in
gender equality and non-discrimination

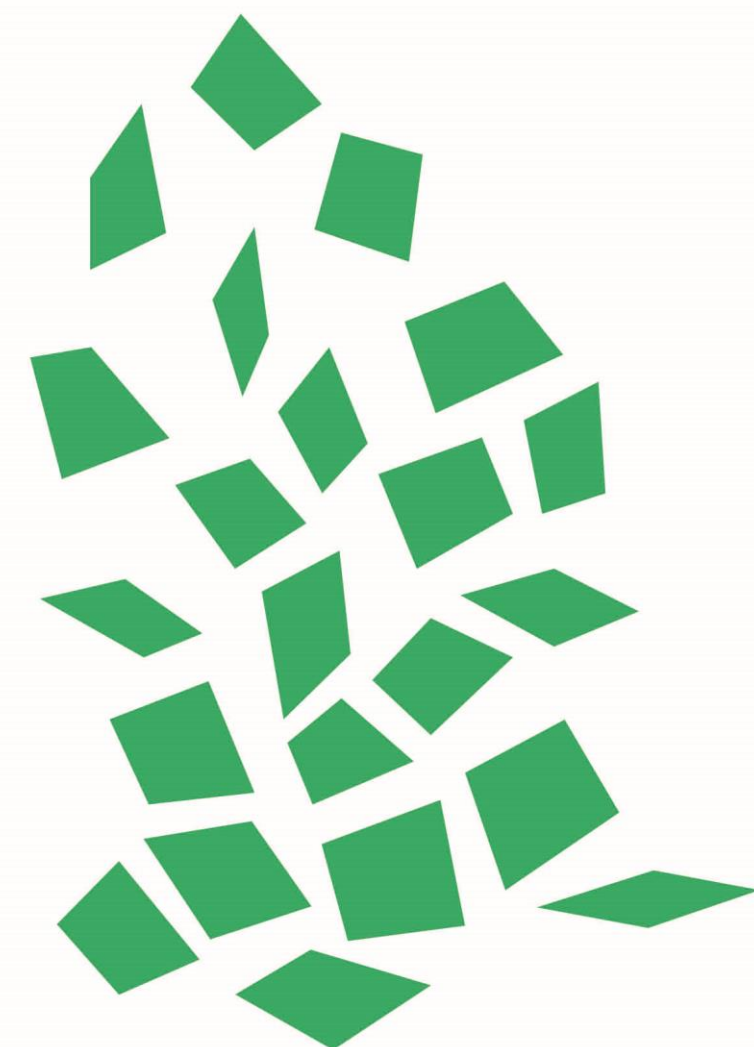
Country report

Non-discrimination

Slovakia

2019

including summary



EUROPEAN COMMISSION

Directorate-General for Justice and Consumers
Directorate D — Equality and Union citizenship
Unit D.1 Non-discrimination and Roma coordination

*European Commission
B-1049 Brussels*

Country report

Non-discrimination

Transposition and implementation at national level of
Council Directives 2000/43 and 2000/78

Slovakia

Vanda Durbáková*

Reporting period 1 January 2018 – 31 December 2018

* The author has gratefully built on the reports written until 2016 by the previous expert Janka Debrecéniová.

***Europe Direct is a service to help you find answers
to your questions about the European Union.***

Freephone number (*):

00 800 6 7 8 9 10 11

(*) The information given is free, as are most calls (though some operators, phone boxes or hotels may charge you).

LEGAL NOTICE

This document has been prepared for the European Commission however it reflects the views only of the authors, and the Commission cannot be held responsible for any use which may be made of the information contained therein.

More information on the European Union is available on the Internet (<http://www.europa.eu>).

Luxembourg: Publications Office of the European Union, 2019

© European Union, 2019

PDF ISBN 978-92-76-00249-9

ISSN 2599-9176

doi:10.2838/013033

DS-BB-19-035-EN-N

CONTENTS

| | |
|---|-----------|
| EXECUTIVE SUMMARY | 5 |
| INTRODUCTION | 13 |
| 1 GENERAL LEGAL FRAMEWORK | 17 |
| 2 THE DEFINITION OF DISCRIMINATION | 19 |
| 2.1 Grounds of unlawful discrimination explicitly covered | 19 |
| 2.1.1 Definition of the grounds of unlawful discrimination within the directives | 19 |
| 2.1.2 Multiple discrimination | 23 |
| 2.1.3 Assumed and associated discrimination | 24 |
| 2.2 Direct discrimination (Article 2(2)(a)) | 24 |
| 2.2.1 Situation testing | 25 |
| 2.3 Indirect discrimination (Article 2(2)(b)) | 27 |
| 2.3.1 Statistical evidence | 28 |
| 2.4 Harassment (Article 2(3)) | 30 |
| 2.5 Instructions to discriminate (Article 2(4)) | 33 |
| 2.6 Reasonable accommodation duties (Article 2(2)(b)(ii) and Article 5 Directive 2000/78) | 34 |
| 3 PERSONAL AND MATERIAL SCOPE | 39 |
| 3.1 Personal scope | 39 |
| 3.1.1 EU and non-EU nationals (Recital 13 and Article 3(2), Directive 2000/43 and Recital 12 and Article 3(2), Directive 2000/78) | 39 |
| 3.1.2 Natural and legal persons (Recital 16, Directive 2000/43) | 39 |
| 3.1.3 Private and public sector including public bodies (Article 3(1)) | 40 |
| 3.2 Material scope | 41 |
| 3.2.1 Employment, self-employment and occupation | 41 |
| 3.2.2 Conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy (Article 3(1)(a)) | 42 |
| 3.2.3 Employment and working conditions, including pay and dismissals (Article 3(1)(c)) | 42 |
| 3.2.4 Access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience (Article 3(1)(b)) | 43 |
| 3.2.5 Membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations (Article 3(1)(d)) | 44 |
| 3.2.6 Social protection, including social security and healthcare (Article 3(1)(e) Directive 2000/43) | 44 |
| 3.2.7 Social advantages (Article 3(1)(f) Directive 2000/43) | 46 |
| 3.2.8 Education (Article 3(1)(g) Directive 2000/43) | 48 |
| 3.2.9 Access to and supply of goods and services that are available to the public (Article 3(1)(h) Directive 2000/43) | 54 |
| 3.2.10 Housing (Article 3(1)(h) Directive 2000/43) | 55 |
| 4 EXCEPTIONS | 59 |
| 4.1 Genuine and determining occupational requirements (Article 4) | 59 |
| 4.2 Employers with an ethos based on religion or belief (Article 4(2) Directive 2000/78) | 59 |
| 4.3 Armed forces and other specific occupations (Article 3(4) and Recital 18 Directive 2000/78) | 61 |
| 4.4 Nationality discrimination (Article 3(2)) | 61 |
| 4.5 Work-related family benefits (Recital 22 Directive 2000/78) | 62 |
| 4.6 Health and safety (Article 7(2) Directive 2000/78) | 63 |

| | | |
|-----------|---|------------|
| 4.7 | Exceptions related to discrimination on the ground of age (Article 6 Directive 2000/78) | 63 |
| 4.7.1 | Direct discrimination | 63 |
| 4.7.2 | Special conditions for young people, older workers and persons with caring responsibilities | 66 |
| 4.7.3 | Minimum and maximum age requirements | 67 |
| 4.7.4 | Retirement | 68 |
| 4.7.5 | Redundancy | 71 |
| 4.8 | Public security, public order, criminal offences, protection of health, protection of the rights and freedoms of others (Article 2(5), Directive 2000/78) | 71 |
| 4.9 | Any other exceptions | 71 |
| 5 | POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78) | 73 |
| 6 | REMEDIES AND ENFORCEMENT | 76 |
| 6.1 | Judicial and/or administrative procedures (Article 7 Directive 2000/43, Article 9 Directive 2000/78) | 76 |
| 6.2 | Legal standing and associations (Article 7(2) Directive 2000/43, Article 9(2) Directive 2000/78) | 82 |
| 6.3 | Burden of proof (Article 8 Directive 2000/43, Article 10 Directive 2000/78) .. | 84 |
| 6.4 | Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78) | 86 |
| 6.5 | Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78) | 87 |
| 7 | BODIES FOR THE PROMOTION OF EQUAL TREATMENT (Article 13 Directive 2000/43) | 91 |
| 8 | IMPLEMENTATION ISSUES | 99 |
| 8.1 | Dissemination of information, dialogue with NGOs and between social partners | 99 |
| 8.2 | Compliance (Article 14 Directive 2000/43, Article 16 Directive 2000/78) | 101 |
| 9 | COORDINATION AT NATIONAL LEVEL | 102 |
| 10 | CURRENT BEST PRACTICES | 103 |
| 11 | SENSITIVE OR CONTROVERSIAL ISSUES | 104 |
| 11.1 | Potential breaches of the directives (if any) | 104 |
| 11.2 | Other issues of concern | 105 |
| 12 | LATEST DEVELOPMENTS IN 2018 | 107 |
| 12.1 | Legislative amendments | 107 |
| 12.2 | Case law | 107 |
| | ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION... | 112 |
| | ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS | 116 |

EXECUTIVE SUMMARY

1. Introduction

The Slovak Republic is a country of 5.4 million people. In addition to Slovak nationals, a wide range of minority groups live in the country. The largest groups are Hungarians (8.5 %) and the Roma minority. The official number of Roma in the last census (2011) was 105 738 (2 %),¹ although the Atlas of Roma Communities 2013 reveals that there are more than 400 000 Roma living in Slovakia, making up 7.45 % of the whole population.² The other minority groups include Czechs, Ukrainians, Croatians, Germans, Poles, Bulgarians, Moravians and Jews.³

In Slovakia, many individuals and groups face serious discrimination due to some of their traits. For example, the Roma people face widespread, deep prejudice and discrimination, which exists in all areas of life and is often characterised by segregation. Roma living in segregated settlements face an increased threat of forced eviction.

Roma children are educated in segregated schools and/or classes and many of them are educated in schools for children with intellectual disabilities. In 2018, the first instance court dismissed a claim by a Roma child that he had been discriminated against in access to education by being placed in special class for children with intellectual disabilities.⁴ This is the first case of this type to be decided by national courts. The decision was appealed and the case is now pending before the appeal court. The first (and so far the only final) case on the segregation of Roma children in education decided by national courts, in 2011 and 2012, concluded that the education of Roma children in separate mainstream classes amounts to racial discrimination and undermines the human dignity of segregated Roma children. The fact that the Slovak Government does not effectively address the segregation of Roma children in education and facilitate their school inclusion has resulted in the submission of other cases to the Slovak courts by the Slovak non-governmental organisation, the Centre for Civil and Human Rights. The segregation of Roma children in education is a very widespread problem. It is notable that Slovakia faces infringement proceedings by the European Commission for violating the EU Racial Equality Directive (2000/43/EC) in the practice of discriminating against Roma children in special and mainstream education systems.⁵ In 2018, the problem was again addressed by the Public Defender of Rights, who published a report assessing the implementation of measures concerning the prevention of discrimination against Roma children by the Ministry of Education in recent years. Among other things, she concluded that although the Government has been continuously working on introducing steps to improve the implementation of the rights of all children and pupils to education, this has not led to obvious progress. The Public Defender of Rights called on the Government authorities to introduce and implement desegregation measures that are as specific and sustainable as possible.⁶

¹ See <http://census2011.statistics.sk/tabulky.html>.

² See Prvé výsledky ATLASU rómskych komunít na Slovensku 2013 (The First Results of the Atlas on Roma Communities in Slovakia 2013) (2013), The first results provided selected summarised data from the Atlas which can be found on the website of the Plenipotentiary of the Government of the Slovak Republic for Roma Communities, available at http://www.minv.sk/?atlas_2013.

³ Each making up less than 1 % of the national population. See <http://census2011.statistics.sk/tabulky.html>.

⁴ Decision of the District Court in Malacky, No. 5C/212/2014, 17 May 2018.

⁵ European Commission's decision to initiate infringement proceedings against Slovakia, 'Non-conformity with Directive 2000/43/EC on Racial Equality - Discrimination of Roma children in education' from 29 April 2015, information available at http://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/index.cfm?lang_code=EN&r_dossier=20152025&noncom=0&decision_date_from=&decision_date_to=&active_only=0&EM=SK&title=&submit=Search.

⁶ Office of the Public Defender of Rights (May 2018), *Správa verejnej ochranky práv o stave prijatia navrhovaných opatrení z rokov 2013, 2014 a 2015 v oblasti výchovno-vzdelávacieho procesu na Slovensku s cieľom zlepšovania ochrany a dodržiavania základných práv a slobôd osôb* (Report assessing the implementation of her previously proposed measures against discrimination of Roma children in education by the Ministry of Education), available in English translation at: http://www.vop.gov.sk/files/EN_SPRAVA_VOP_vn%C3%BAatorny_audit_skolstvo.pdf.

Widespread and often open racism and general disrespect towards minorities are omnipresent, not only among the general public but also at the highest political level. Racial and nationalist hatred raises additional concerns. Public support for far-right policies increased and resulted in the accession of the far-right extremist party, National Party – Our Slovakia, to the Slovak Parliament after the elections in March 2016.

The LGBTI community has not acquired full legal and political recognition, e.g. through the ability to enter into marriage or a registered partnership. Homophobic voices and voices that contest the concept of gender equality are getting stronger and stronger and come not only from the Catholic Church hierarchies, but also from the highest political representatives. The Slovak Public Defender of Rights has concluded that non-recognition of same sex partnerships violates the human rights obligations of the Slovak Republic.⁷

People with disabilities face numerous physical and societal barriers and segregation on a daily basis in all fields of life. The ombudswoman has addressed the current deficiencies and recommended specific measures that the state authorities responsible must take in order to prevent discrimination against people with disabilities in accessing public buildings.⁸

Many other individuals and groups also face serious discrimination, often in combinations of several grounds. Roma women are especially affected by multiple discrimination.

2. Main legislation

The Slovak Republic is party to several international human rights treaties including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the European Convention on Human Rights, the UN Convention on the Elimination of All Forms of Racial Discrimination, and the UN Convention on the Rights of Persons with Disabilities.

The Constitution of the Slovak Republic states that human rights are guaranteed to every individual regardless of sex, race, skin colour, language, belief, religion, political affiliation or conviction, national or social origin, nationality (*národnosť*)⁹ or ethnic origin, property, lineage or any other status. The list of prohibited grounds of discrimination in the Constitution is open-ended ('any other status'), which is why it can be argued that sexual orientation, disability and age, as well as any other grounds covered by the legislation are also constitutionally protected grounds.¹⁰ No person can be denied their legal rights, discriminated against or favoured on any of these grounds.

⁷ Office of the Public Defender of Rights (September 2017), *Stanovisko verejnej ochránkyne práv k verejnej ochránkyne práv k problematike práva párov rovnakého pohlavia na uznanie ich vzťahu v právnom poriadku SR* (Opinion of the Public Defender of Rights on the issue of same-sex couples and recognition of their relationship in the Slovak legal order) available at <http://www.vop.gov.sk/stanovisko-verejnej-ochrankyne-prav-k-problematike-prava-parov-rovnakeho-pohlavia-na-uznanie-ich-vztahu-v-pravnom-poriadku-sr>.

⁸ Office of the Public Defender of Rights (October 2016), *Správa o výsledkoch prieskumu bezbariérového prístupu do budov škôl a bezbariérovosti v nich* (Report on outcomes of the research on access to school buildings for the disabled); Office of the Public Defender of Rights (September 2016), *Správa o výsledkoch prieskumu zabezpečenia bezbariérového prístupu v budovách, ktoré sú sídlami útvarov Policajného zboru a klientskych centier* (Report on outcomes of the research on access to police buildings and their client's centres for the disabled); Office of the Public Defender of Rights (September 2016), *Bezbariérovosť v štátnych nemocniciach a iných zdravotníckych zariadeniach - správa o výsledkoch prieskumu* (Access to state-run hospitals and other health care facilities for the disabled - report on outcomes of the research), all available at: <http://www.vop.gov.sk/spravy-z-prieskumov-a-priority-za-rok-2016>

⁹ In Slovak law, the word 'nationality' (*národnosť*) is separate and distinct from the word 'citizenship' (*štátne občianstvo*). Whereas 'citizenship' is understood as meaning nationality in the sense of having a legal affiliation with a particular state (i.e. being a national or citizen of the Slovak Republic), 'nationality' is understood as an affiliation with a particular 'nation' (a group of people defined by common language, geographical and cultural roots etc.) or ethnic group. Thus, 'nationality' is often understood as meaning 'ethnicity', including in the practice of state bodies and public institutions.

¹⁰ See for example the findings of the Constitutional Court of the Slovak Republic, PL. ÚS 8/04-202, 18 October 2005 and No III. ÚS 64/00-65, 31 January 2001.

The Anti-Discrimination Act (ADA) now in force was adopted in May 2004,¹¹ immediately after Slovakia joined the EU. The ADA meets the minimum standards required by the directives and goes beyond them in some instances.

The ADA prohibits discrimination on the grounds of sex, religion or belief, race, affiliation with nationality or an ethnic group, disability, age, sexual orientation, marital status and family status, colour of skin, language, political or other opinion, national or social origin, property, lineage/gender¹² or other status, or for the reason of reporting criminality or other anti-social activity.¹³ In addition to the ADA, several special laws in all the fields covered by the directives refer to the ADA, sometimes extending the scope of grounds protected by it. Thus, in accordance with these other laws, discrimination is also prohibited on the grounds of unfavourable state of health, genetic features, trade union activities, or activities within associations. In some cases, these laws also contain special mechanisms for invoking the right to equal treatment. Some serious offensive and discriminatory behaviour is outlawed separately by the Criminal Code.

The ADA defines the principle of equal treatment not only as the prohibition of discrimination, but also as a duty to adopt measures to prevent it.¹⁴ The principle of equal treatment applies to all fields covered by the directives (these are all contained in the ADA) and to all grounds covered by the ADA.

3. Main principles and definitions

The ADA defines direct discrimination, indirect discrimination, harassment, sexual harassment, instruction to discriminate, incitement to discrimination,¹⁵ and victimisation.¹⁶ Except for incitement to discrimination (which is a form that goes beyond the scope of the directives and does not conflict with them), the definitions follow the patterns of both Directives 2000/43/EC and 2000/78/EC. Discrimination by association is also prohibited, but this only covers race, nationality (*národnosť*), ethnicity, religion and belief.¹⁷ In determining whether discrimination has occurred or not, no account is taken of whether the reasons for discrimination were based on facts or on a false assumption.¹⁸

The ADA also imposes on employers the duty to provide reasonable accommodation. In particular, it obliges them to take appropriate measures to enable a person with a disability to have access to employment, promotion or other advancement at work, and to training. At the same time, accommodating the needs of a person with disabilities must not impose a disproportionate burden on an employer.¹⁹

An exception grounded on genuine and determining occupational requirements is permitted if it is justified in accordance with rules that are identical to those in the directives.²⁰

The ADA also defines other exceptions to the principle of equal treatment. Discrimination on the ground of religion or belief is allowed for churches and religious organisations if a

¹¹ Slovakia, Act No. 365/2004 on Equal Treatment in Certain Areas and on Protection Against Discrimination (Anti-discrimination Act), as amended (*zákon č. 365/2004 Z. z. o rovnakom zaobchádzaní v niektorých oblastiach a o ochrane pred diskrimináciou a o zmene a doplnení niektorých zákonov (antidiskriminačný zákon) v znení neskorších predpisov*).

¹² The Slovak word *rod* can be translated as either 'lineage' or 'gender'.

¹³ Slovakia, Anti-discrimination Act, 365/2004, Section 2(1).

¹⁴ Slovakia, Anti-discrimination Act, 365/2004, Sections 2(1) and 2(3).

¹⁵ An instruction to discriminate is defined as abusive conduct towards a person in a subordinate position for the purpose of discriminating against a third person. Incitement to discrimination can be in the form of persuading, affirming or inciting a person to discriminate against a third person.

¹⁶ Slovakia, Anti-discrimination Act, 365/2004, Section 2a(1)-(8).

¹⁷ Slovakia, Anti-discrimination Act, 365/2004, Sections 2a(11)(b) and 2a(11)(c).

¹⁸ Slovakia, Anti-discrimination Act, 365/2004, Section 3(3).

¹⁹ Slovakia, Anti-discrimination Act, 365/2004, Section 7.

²⁰ Slovakia, Anti-discrimination Act, 365/2004, Section 8(1).

person's religion is fundamental to the exercise of a certain occupation.²¹ The ADA stipulates that it does not apply to legal regulation of the status of third-country nationals²² and states that, in the armed forces and security and rescue services, discrimination on the grounds of disability and age is allowed.²³

Under special circumstances, several exceptions concern differences in treatment on the ground of age, such as setting age restrictions for access to employment, entitlement to certain social benefits in employment or for the provision of insurance services.²⁴ Differential treatment on the ground of disability is not considered to be discrimination in providing insurance services or in employment where the health requirements are essential for carrying out certain occupational activities.²⁵

The existing legal rules and case law do not explicitly deal with situations of multiple discrimination.

4. Material scope

The principle of equal treatment applies to all areas defined in the EU directives and overall goes beyond the scope of the directives.

In particular, the principle of equal treatment must be observed in the field of access to employment, occupation and other earning activity or function, including recruitment requirements, selection criteria and methods, vocational training, advanced vocational training and participation in active labour market policy programmes, including vocational guidance services, membership and activity in employees' organisations, employers' organisations and in organisations whose members carry out a particular profession, including benefits provided by such organisations, and in the fields of social services, social insurance, old-age pension insurance, supplementary pension insurance, state social support and social advantages, healthcare, education, and goods and services, including housing (explicitly, housing provided to the public by legal entities and natural persons who are entrepreneurs).²⁶ In all these fields, discrimination is prohibited on all the grounds listed in the ADA. The implementation of the ADA applies to both the private and the public sector. In 2018, the Regional Court in Prešov issued a final landmark decision in a case of residential segregation of Roma who have been illegally moved out of rental apartments in a central area owned by the town of Sabinov to new rental apartments of a lower standard, built by the town outside the built-up areas and far from the town's infrastructure. In its decision, the Prešov Regional Court emphasised the responsibility of Government institutions to prevent racial discrimination.²⁷

5. Enforcing the law

Although anti-discrimination legislation is relatively progressive, its implementation is very weak in practice. Despite being poorly documented by the state and its bodies, discrimination seems to be widespread and present in all fields covered by the directives (and beyond) and seems to be taking place through more subtle forms than in the past, due to the introduction of non-discrimination language to the discourse. One of the reasons for the weak implementation of the legislation may be the fact that there is very low enforcement through legal procedures. The Ministry of Justice presented data on only four cases concerning discrimination that were finalised by effective judgments in the first half

²¹ Slovakia, Anti-discrimination Act, 365/2004, Section 8(2).

²² Slovakia, Anti-discrimination Act, 365/2004, Section 4(1)(a).

²³ Slovakia, Anti-discrimination Act, 365/2004, Sections 4(1)(b) and 4(1)(c).

²⁴ Slovakia, Anti-discrimination Act, 365/2004, Section 8(3).

²⁵ Slovakia, Anti-discrimination Act, 365/2004, Sections 8(6) and 8(5).

²⁶ Slovakia, Anti-discrimination Act, 365/2004, Sections 3(1), 5 and 6.

²⁷ Regional Court of Prešov, Decision No. 13 Co 38/2017, 20 March 2018.

of 2018.²⁸ The available numbers on the on-going and finished proceedings are not accurate because the corresponding data are either not collected or are not collected properly.²⁹ The Ministry of Justice recognises that there are shortcomings in the collection of data about court judgments and plans to make improvements in 2019.

Anyone who considers himself/herself to have been wronged by a breach of the principle of equal treatment can bring the perpetrator to court. The person discriminated against (the claimant) can demand before a civil court (there are no special labour courts) that the person who breached the principle of equal treatment (the defendant) refrains from such conduct and, where possible, rectifies the illegal state of affairs. If the violation of the principle of equal treatment has considerably impaired the dignity, social status or social achievements of the victim, the victim may also seek financial compensation of non-pecuniary damage. The amount of compensation has no fixed scale.³⁰ It is up to the court to accept, reject or lower the proposed amount in each particular case. A claimant can, in principle, claim other remedies, such as the court declaring the treatment by a defendant to be discriminatory. A person who has been discriminated against may also request material damages, if it is proved that such damage was caused by discriminatory behaviour.³¹

The existing case law shows that courts are rather reluctant to impose sanctions on perpetrators that would be effective, proportionate and dissuasive. This is especially true for financial compensation of non-pecuniary damage. The Regional Court in Košice in its final decision awarded financial compensation totalling EUR 600 (EUR 300 each) to a Roma couple who claimed to have been discriminated against based on their ethnic origin in a local bar in Spišské Vlachy. This is one of the first final cases in Slovakia in which the courts have awarded financial compensation for racial discrimination.³² In 2018, the appeal court upheld the first instance court ruling in a case of discrimination against a Roma woman in access to employment and awarded her EUR 2 500 as non-pecuniary damage. This is a landmark decision as it was the first time that the domestic courts ruled in favour of a Roma victim of discrimination in a case of access to employment.³³

There is a shift of the burden of proof in court proceedings once the claimant has communicated to the court facts giving rise to a reasonable presumption that violation of the principle of equal treatment has occurred. The defendant must prove that there has been no discrimination against the claimant or that the treatment was necessary and justifiable.³⁴ The implementation of this measure by Slovak courts is still problematic in practice. This has been also highlighted by the UN Committee on the Elimination of Racial Discrimination in its decision against Slovakia concerning an individual case of discrimination against a Roma woman in access to employment.³⁵

A person affected by discrimination may be represented in court by the Slovak National Centre for Human Rights (the equality body) or by an organisation that has protection against discrimination as its aim (in practice such organisations are mainly NGOs, but in principle they could also be trade unions).³⁶

²⁸ Response from the Ministry of Justice of 12 February 2019 to a request for information of 31 January 2019 (on file with the author).

²⁹ Response from the Ministry of Justice of 12 February 2019 to a request for information of 31 January 2019 (on file with the author).

³⁰ Slovakia, Anti-discrimination Act, 365/2004, Section 9(1)-(3), in conjunction with Section 11(1).

³¹ Slovakia, Anti-discrimination Act, 365/2004, Section 9(4).

³² Decision of the Košice Regional Court, No. 6 Co 833/2014 – 223, 28 June 2016.

³³ Decision of the Spišská Nová Ves District Court, No. 8 C 268/2016 – 523, of 23 March 2017 upheld by the decision of the Regional Court in Košice of 7 February 2018 (ref. No. 9Co 259/2017).

³⁴ Slovakia, Anti-discrimination Act, 365/2004, Section 11(2).

³⁵ See the opinion of the UN Committee on the Elimination of Racial Discrimination in the case of *V.S. v. Slovakia*, Communication no. 56/2014 of 16 December 2015, para. 7.4. and 9.

³⁶ Slovakia, Anti-discrimination Act, 365/2004, Section 10.

Sometimes, in cases of discrimination that affect a larger or non-specified number of people or otherwise threaten the public interest, such an organisation, or the Slovak National Centre for Human Rights, can sue the discriminating entity in its own name (so-called *actio popularis*).³⁷ So far, a few such cases have been initiated (all by an NGOs),³⁸ although only one of them has been won and finalised (a case concerning the segregation of Roma children in education).³⁹

There are few NGOs in Slovakia that provide legal assistance to people affected by discrimination.

According to the Labour Code, an employee may submit a complaint to an employer claiming infringement of the principle of equal treatment. The employer is obliged to respond to such a complaint without undue delay, perform restitution and abstain from the discriminatory conduct.⁴⁰ However, the effect of this kind of remedy is questionable because there is no official authority outside the employment relationship to handle the complaints and employees may be deterred from using the law in this way (due to fear of victimisation, for example).

Sanctions for discriminatory behaviour can also be imposed through the administrative imposition of fines. The labour, trade and school inspectorates are the bodies in charge. However, in practice, proceedings before inspectorates are still not much used to enforce the anti-discrimination provisions. Furthermore, no shift in burden of proof applies in such proceedings, and even if such proceedings take place, fines are either not imposed or their amount is insufficient and without dissuasive effect.

The ADA contains a provision enabling public administration bodies and other legal entities to adopt positive action measures (entitled 'temporary equalising measures'). The act stipulates that such measures should be aimed at removing disadvantages following from the grounds of racial or ethnic origin, affiliation with a national minority or an ethnic group, gender or sex, age or disability, and that their aim should be to guarantee equality of opportunity in practice.⁴¹ Some positive action measures are in place with regard to the Roma. For example, the Healthy Communities programme employs 264 health mediators mostly of Roma origin in marginalised Roma communities (the mediators mostly come from these communities) who assist people with everyday health-related situations. Employment legislation provides for special protection for people with disabilities and there is a special quota system established for employers who employ at least 20 employees.⁴² More than 50 employers committed themselves to supporting diversity and avoiding discrimination in the workplace by signing a diversity charter.⁴³

Some form of dialogue with NGOs is taking place through the Council of the Government of the Slovak Republic for Human Rights, National Minorities and Gender Equality - the Government's advisory body.⁴⁴ The functioning of the council has some systemic and practical drawbacks.

³⁷ Slovakia, Anti-discrimination Act, 365/2004, Section 9a.

³⁸ Centre for Civil and Human Rights and European Roma Rights Center.

³⁹ Case *Poradňa pre občianske a ľudské práva vs Základná škola v Šarišských Michalánoch* (Centre for Civil and Human Rights vs Šarišské Michalany Primary School), decision of the District Court in Prešov of 5 December 2011, ref. No 25C 133/10-229-, and decision of the Regional Court in Prešov of 30 October 2012, ref. No 20Co 125/2012, 20Co 126/2012.

⁴⁰ See Slovakia, Act No 311/2001 Labour Code (*zákon č. 311/2001 Z. z. Zákonník práce*), Section 13(5).

⁴¹ Slovakia, Anti-discrimination Act, 365/2004, Section 8a.

⁴² Pursuant to Slovakia, Act No 5/2004 on Employment Services, Sections 63-65, any employer who employs at least 20 employees is obliged to ensure that people with disabilities make up at least 3.2 % of the workforce, provided that the local labour office has job seekers with disabilities on its register. Instead of employing a person with a disability, an employer can also decide to buy goods or services from a sheltered workshop or a sheltered workplace or a self-employed person with a disability.

⁴³ More information about this initiative is available at: <https://www.chartadiverzity.sk/>.

⁴⁴ Slovakia, Act No 575/2001 on the Organisation of the Activities of the Government and on the Organisation of the Central State Administration, as amended (*zákon č. 575/2001 Z. z. o organizácii činnosti vlády a*

It appears that there is no constant and systematic dialogue between the Government and trade unions as regards non-discrimination. In general, trade unions are not very active in the field.

6. Equality bodies

The body designated for the promotion of equal treatment is the Slovak National Centre for Human Rights. The centre is an independent, non-judicial body, subsidised mainly through the state budget.⁴⁵

The centre is empowered to draft expert opinions on compliance with the principle of equal treatment. It is also tasked with monitoring and evaluating the observance of human rights and of equal treatment and with collecting and providing information on racism, xenophobia and anti-Semitism, as well as with carrying out independent inquiries concerning discrimination. More generally, the centre is obliged to conduct research and surveys for the purpose of providing data in the field of human rights. The centre is also obliged to publish an annual report on the observance of human rights, including the principle of equal treatment, in Slovakia. It is also required to secure legal aid for people affected by discrimination under the ADA and is empowered to represent the victims of discrimination in court.⁴⁶ It may also file an *actio popularis* (see above). As the centre is competent to act in cases of discrimination defined by the ADA, it works on all the grounds defined by it.

In 2018, the centre dealt with 90 complaints where discrimination was claimed, out of which: 6 concerned age, 7 ethnic origin, 2 nationality, 3 gender, 9 disability, 1 sexual orientation, 2 family status, 2 political or other opinion and 6 on reporting criminality or other anti-social activity and 29 other status. As regards the field of the received complaints, 73 concerned labour or similar relations, 9 providing goods and services, 4 social security and 1 education. Out of all the complaints received, the centre identified violation of the principle of equal treatment in 16 complaints. In 2018, the centre issued 15 expert opinions assessing possible breaches of anti-discrimination legislation, provided legal representation to 5 people in court proceedings concerning discrimination and did not submit any *actio popularis* lawsuits.⁴⁷

For a long time now, various sources have been reporting that the centre is not fulfilling its tasks efficiently and satisfactorily.⁴⁸ In 2011, the Slovak Government approved an analytical report on the functioning and status of the centre, the first (and last) of its kind. The report presented several findings, which resulted from a relatively complex data-gathering exercise. Following the findings of the report and further analyses, in 2018, the Ministry of Justice prepared a draft amendment to the Act on the Centre that will be submitted to the Parliament in 2019.⁴⁹ The amendment aims to secure the compliance of

organizácii ústrednej štátnej správy v znení neskorších predpisov), Section 2(3). The website of the Council of the Government: www.radavladyp.gov.sk/.

⁴⁵ Slovakia, Act No 308/1993 on Establishing the Slovak National Centre for Human Rights (*zákon č. 308/1993 Z. z. o zriadení Slovenského národného strediska pre ľudské práva*), Sections 1 and 2(1)-(3).

⁴⁶ Slovakia, Act No 308/1993 on Establishing the Slovak National Centre for Human Rights, Sections 1(2)-(4).

⁴⁷ Response of the Centre for Human Rights of 7 February 2018 to a request for information of 30 January 2019 (on file with the author).

⁴⁸ See, for example, Durbáková, V., Holubová, B., Ivanco, Š., Liptáková, S. (2012), *Hľadanie bariér v prístupe k účinnej právnej ochrane pred diskrimináciou* (*Searching for barriers in access to effective legal protection from discrimination*), Košice: Poradňa pre občianske a ľudské práva, pp. 110-112. Available at: <http://www.poradna-prava.sk/sk/dokumenty/diskriminacia-na-slovensku-hladanie-barier-v-pristupe-k-ucinnej-pravnej-ochrane-pred-diskriminaciou/>; Concluding Observations of the Human Rights Committee from October 2016, (CCPR/C/SVK/CO/4), para. 8. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fSVK%2fCO%2f4&Lang=en.

⁴⁹ The proposed amendment and information about the course of the on-going legislative process are available at: <https://www.nrsr.sk/web/Default.aspx?sid=zakony/cpt&ZakZborID=13&CisObdobia=7&ID=1264>.

the centre with the Paris principles that set international standards regarding the functioning of national human rights institutions.

7. Key issues

In general, the transposition of the directives has been carried out in a relatively satisfactory manner, going beyond the requirements of the directives in many instances, and, despite there being a lot of room for improvement (e. g. in some procedural rules), it could serve as a good departure point for the implementation of the principle of equal treatment in practice. However, at the moment, implementation is still far behind the requirements of the directives. The main reasons for this are: barriers to access to courts and to justice in general; lack of proper knowledge of anti-discrimination legislation by legal professionals and by decision-makers; racial prejudices among judges and a lack of programmes to raise their awareness; lack of case law and deficiencies in the registration of cases on discrimination; lack of data and statistics connected to discrimination and its grounds; lack of effectiveness in the functioning of the equality body; lack of public policies in the field of anti-discrimination; lack of effective policies and resources for the transition from a segregated to an inclusive educational system; lack of mainstreaming of the principle of non-discrimination and lack of coordination among public bodies responsible for non-discrimination; lack of resources invested by the Government into non-discrimination; lack of systemic support of NGOs by the Government; the system of education not sufficiently integrating the principles and values of human rights and non-discrimination; politicians lacking commitment and interest in such values; a very high level of occurrence and tolerance of racism and discriminatory attitudes in society as a whole; and increased public support for far-right policies.

INTRODUCTION

The national legal system

The Slovak Republic has a parliamentary form of government and a statutory law system, its basic law being the Constitution,⁵⁰ which lays down the scope of guaranteed fundamental rights. International treaties on human rights and fundamental freedoms, international treaties for the exercise of which no other law is necessary, and international treaties that directly confer rights or impose duties on natural persons or legal persons and that were ratified by Slovakia and promulgated as prescribed by the law, take precedence over national laws.⁵¹ Legally binding acts of the European Union take precedence over the laws of the Slovak Republic.⁵² Regulations of the Government and generally binding legal regulations of ministries have to be in compliance with the Constitution, with international treaties that were promulgated as prescribed by the law, and with laws.⁵³

In matters of local and regional self-governance and in the exercise of tasks stipulated by the law, municipalities and self-governing regions may adopt generally binding legal regulations.⁵⁴ In the field of non-discrimination, this has relevance mainly in the field of social protection (e.g. social services and social advantages), housing and education. Generally binding legal regulations of municipalities and self-governing regions must be in compliance with the Constitution, with international treaties that were promulgated as prescribed by the law, with laws, with governmental regulations, and with generally binding legal regulations of ministries.⁵⁵

Together with the Constitution, the Act on Equal Treatment in Certain Areas and Protection against Discrimination (Anti-discrimination Act),⁵⁶ which was adopted on 20 May 2004 and came into force on 1 July 2004, establishes the basic legal framework of Slovak anti-discrimination law.

According to the Anti-discrimination Act, the statutory obligation to observe the principle of equal treatment within the areas stipulated by law applies to 'everyone'.⁵⁷ The duty to observe the principle of equal treatment is defined as comprising the prohibition of discrimination⁵⁸ on the prohibited grounds (sex, religion or belief, race, affiliation with a nationality or an ethnic group, disability, age, sexual orientation, marital status and family status, colour of skin, language, political or other opinion, national or social origin, property, lineage/gender or other status, or the reason of reporting criminality or other anti-social activity).⁵⁹ It also requires 'measures for protection against discrimination'⁶⁰ to be adopted.

⁵⁰ Slovakia, The Constitution of the Slovak Republic No. 460/1992, as amended (*Ústava Slovenskej republiky č. 460/1992 Zb. v znení neskorších predpisov*), 1 September 1992. The version of Constitution effective until 31 December 2018 can be found in Slovak at <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1992/460/20170601?ucinnost=31.12.2018>. All other laws published in the Collection of Laws from 1998 onwards can be found in the Slovak language at: <https://www.slov-lex.sk/domov>.

⁵¹ Article 7(5) of the Constitution.

⁵² Article 7(2) of the Constitution.

⁵³ Article 125(1)(b) of the Constitution.

⁵⁴ Article 71(2) of the Constitution.

⁵⁵ Article 125(1)(d) of the Constitution.

⁵⁶ Slovakia, Act No. 365/2004 on Equal Treatment in Certain Areas and Protection against Discrimination, amending and supplementing certain laws (Anti-discrimination Act), as amended (*Zákon č. 365/2004 Z. z. o rovnakom zaobchádzaní v niektorých oblastiach a o ochrane pred diskrimináciou a o zmene a doplnení niektorých zákonov (Antidiskriminačný zákon) v znení neskorších predpisov*), 20 May 2004. The English text of the Anti-discrimination Act can be found at http://www.snsip.sk/CCMS/files/AntidiskriminacnyZakon_ENG-1.1.2015.pdf.

⁵⁷ Slovakia, Anti-discrimination Act, 365/2004, Section 3(1).

⁵⁸ Slovakia, Anti-discrimination Act, 365/2004, Section 2a(1). According to this section, discrimination can take the following forms: direct discrimination, indirect discrimination, harassment, sexual harassment, victimisation, instruction to discriminate and incitement to discriminate.

⁵⁹ Slovakia, Anti-discrimination Act, 365/2004, Section 2(1).

⁶⁰ Slovakia, Anti-discrimination Act, 365/2004, Section 2(3).

In addition to the Anti-discrimination Act, the duty to observe the principle of equal treatment in particular spheres of life is regulated by other laws, which either refer to the Anti-discrimination Act or contain their own equal treatment/anti-discrimination clauses that usually duplicate some of the provisions contained in the Anti-discrimination Act and/or add some details specific to the personal and material scope of the piece of legislation.

List of main legislation transposing and implementing the directives

Title of the law: Act No. 365/2004 on Equal Treatment in Certain Areas and Protection Against Discrimination (Anti-discrimination Act)⁶¹

Date of adoption: 20 May 2004

Grounds covered: sex, religion or belief, race, affiliation with a nationality or an ethnic group, disability, age, sexual orientation, marital status and family status, colour of skin, language, political or other opinion, national or social origin, property, lineage/gender or other status, or the reason of reporting criminality or other anti-social activity, contained in Section 2(1) of the Anti-discrimination Act (and some other grounds contained in some other acts, mainly trade union involvement, unfavourable state of health and genetic features, contained, for example, in the Labour Code)

Material scope: employment and occupation, social security, social advantages, healthcare, provision of goods and services including housing and education.

Title of the law: Labour Code No. 311/2001⁶²

Date of adoption: 02 July 2001

Grounds covered: sex, religion or belief, race, affiliation with a nationality or an ethnic group, disability, age, sexual orientation, marital status and family status, colour of skin, language, political or other opinion, national or social origin, property, lineage/gender or other status, or the reason of reporting criminality or other anti-social activity, contained in Section 2(1) of the Anti-discrimination Act as well as trade union involvement, unfavourable state of health and genetic features

Material scope: employment.

Title of the law: Act No. 55/2017 on Civil Service⁶³

Date of adoption: 1 February 2017

Grounds covered: all grounds covered by the Anti-discrimination Act as well as unfavourable state of health, duties to family, membership of or involvement in a political party or a political movement, a trade union or another association

Material scope: employment.

Title of the law: Act No. 5/2004 on Employment Services⁶⁴

Date of adoption: 04 December 2003

Grounds covered: all grounds covered by the Anti-discrimination Act as well as activity in trade unions

Material scope: employment.

Title of the law: Act No. 245/2008 on Education (Schools Act)⁶⁵

Date of adoption: 22 May 2008

⁶¹ Slovakia, Act No. 365/2004 on Equal Treatment in Certain Areas and Protection Against Discrimination (Anti-discrimination Act) (*zákon č. 365/2004 Z. z. o rovnakom zaobchádzaní v niektorých oblastiach a o ochrane pred diskrimináciou a o zmene a doplnení niektorých zákonov (antidiskriminačný zákon)*).

⁶² Slovakia, Labour Code No. 311/2001 (*zákon č. 311/2001 Z. z. Zákonník práce*).

⁶³ Slovakia, Act No. 55/2017 on Civil Service, as amended (*zákon č. 55/2017 Z. z. o štátnej službe a o zmene a doplnení niektorých zákonov*).

⁶⁴ Slovakia, Act No. 5/2004 on Employment Services, as amended (*zákon č. 5/2004 Z. z. o službách zamestnanosti a o zmene a doplnení niektorých zákonov*).

⁶⁵ Slovakia, Act No. 245/2008 on Education (Schools Act) (*zákon č. 245/2009 Z. z. o výchove a vzdelávaní (školský zákon) a o zmene a doplnení niektorých zákonov*).

Grounds covered: all grounds covered by the Anti-discrimination Act as well as social disadvantage

Material scope: education.

Title of the law: Act No 131/2002 on Higher Education⁶⁶

Date of adoption: 21 February 2002

Grounds covered: all grounds covered by the Anti-discrimination Act

Material scope: education.

Title of the law: Act No. 576/2004 on Healthcare⁶⁷

Date of adoption: 21 October 2004

Grounds covered: all grounds covered by the Anti-discrimination Act

Material scope: healthcare.

Title of the law: Act No. 461/2003 on Social Insurance⁶⁸

Date of adoption: 30 October 2003

Grounds covered: all grounds covered by the Anti-discrimination Act

Material scope: social security.

Title of the law: Act No. 448/2008 on Social Services⁶⁹

Date of adoption: 30 October 2008

Grounds covered: all grounds covered by the Anti-discrimination Act, as well as unfavourable social situation

Material scope: social security.

Title of the law: Act No. 308/1993 on Establishing the Slovak National Centre for Human Rights⁷⁰

Date of adoption: 15 December 1993

Grounds covered: all grounds covered by the Anti-discrimination Act, as well as some other grounds contained in other acts (unfavourable state of health, genetic features, duties to family, membership of or involvement in a political party or a political movement, a trade union or other association)

Material scope: employment and occupation, social security, social advantages, healthcare, provision of goods and services including housing and education.

Title of the law: Act No. 160/2015 Civil Dispute Act⁷¹

Date of adoption: 21 May 2015

Grounds covered: all grounds covered by the Anti-discrimination Act and some other grounds contained in some other acts, mainly trade union involvement, unfavourable state of health and genetic features, contained, for example, in the Labour Code.

Material scope: employment and occupation, social security, social advantages, healthcare, provision of goods and services including housing and education.

Title of the law: Act No. 162/2015 Administrative Judicial Act⁷²

⁶⁶ Slovakia, Act No 131/2002 on Higher Education, as amended (*zákon č. 131/2002 o vysokých školách a o zmene a doplnení niektorých zákonov*).

⁶⁷ Slovakia, Act No. 576/2004 on Healthcare, Services Related to the Provision of Healthcare and on amending and supplementing certain acts, as amended (*zákon č. Act No. 576/2004 Z. z. o zdravotnej starostlivosti, službách súvisiacich s poskytovaním zdravotnej starostlivosti a o zmene a doplnení niektorých zákonov*).

⁶⁸ Slovakia, Act No. 461/2003 on Social Insurance, as amended (*zákon č. 461/2003 Z. z. o sociálnom poistení v znení neskorších predpisov*).

⁶⁹ Slovakia, Act No. 448/2008 on Social Services and on amending and supplementing Act No. 455/1991 on Licensed Trades (Small Business Act), as amended (*zákon č. 448/2008 Z. z. o sociálnych službách a o zmene a doplnení zákona č. 455/1991 Zb. o živnostenskom podnikaní (živnostenský zákon) v znení neskorších predpisov*).

⁷⁰ Slovakia, Act No. 308/1993 on Establishing the Slovak National Centre for Human Rights (*zákon č. 308/1993 Z. z. o zriadení Slovenského národného strediska pre ľudské práva*).

⁷¹ Slovakia, Act No. 160/2015 Civil Dispute Act (*zákon č. 160/2015 Z. z. Civilný sporový poriadok*).

⁷² Slovakia, Act No. 162/2015 Administrative Judicial Act (*zákon č. 162/2015 Z. z. Správny súdny poriadok*)

Date of adoption: 21 May 2015

Grounds covered: all grounds covered by the Anti-discrimination Act and some other grounds contained in some other acts, mainly trade union involvement, unfavourable state of health and genetic features, contained, for example, in the Labour Code.

Material scope: employment and occupation, social security, social advantages, healthcare, provision of goods and services including housing and education.

1 GENERAL LEGAL FRAMEWORK

Constitutional provisions on protection against discrimination and the promotion of equality

The Slovak Constitution includes the following Articles dealing with non-discrimination:

- Article 12 – a general clause. Article 12(1) states that ‘people are free and equal in dignity and rights’. Article 12(2) stipulates that ‘fundamental rights and freedoms are guaranteed in the territory of the Slovak Republic to every person regardless of sex, race, skin colour, language, belief, religion, political affiliation or conviction, national or social origin, nationality or ethnic origin, property, lineage/gender⁷³ or any other status. No person shall be denied their legal rights, discriminated against or favoured on any of these grounds’.
- Article 12(3) of the Constitution guarantees free choice of ‘nationality’.⁷⁴ The right to be treated equally is an accessory right and can only be claimed in connection with the protection of particular fundamental rights and freedoms listed in the Constitution.⁷⁵ The list of prohibited grounds of discrimination in the Constitution is open-ended (‘any other status’) and the Constitutional Court has already declared that sexual orientation is a constitutionally prohibited ground of discrimination.⁷⁶ Given the fact that the list is open-ended, it can be argued that disability and age, as well as any other grounds covered by the legislation⁷⁷ or even not covered by generally binding Slovak legal acts, are also constitutionally protected grounds.⁷⁸
- Article 24 – freedom of thought, conscience, religion and belief.
- Article 33 – the affiliation to any national minority or an ethnic group cannot be to the detriment of anyone.
- Article 34 – special rights of citizens belonging to national minorities or ethnic groups.
- Article 38 – special work-related protection for women, minors and people with disabilities.
- Article 41(2) – special care and work-related protection for pregnant women.

These provisions apply to all areas covered by the directives. Their material scope is broader than those of the directives.

These provisions are directly applicable, but only have vertical effect. The Constitutional Court held explicitly that Articles 12(1) and 12(2) of the Constitution do not have direct horizontal effect.⁷⁹

⁷³ The Slovak Constitution uses the word *rod*, which is equivalent to both ‘lineage’ and ‘gender’. The Constitutional Court has not interpreted the concept of *rod* directly yet. However, it has already used the word *rod* in the sense of gender when it referred to the ‘gender context’ of one of the cases that it was deciding (minimum pay threshold stated by law for nurses), albeit without a direct reference to the word *rod* contained in the list of prohibited grounds of discrimination in Article 12(2) of the Constitution. See the finding of the Constitutional Court of the Slovak Republic, PL. ÚS 13/2012-90, 19 June 2013, paragraph 139).

⁷⁴ In Slovak law, the word ‘nationality’ (*národnosť*) is separate and distinct from the word ‘citizenship’ (*štátne občianstvo*). Whereas ‘citizenship’ is understood as meaning nationality in the sense of having a legal affiliation with a particular state (i.e. being a national or citizen of the Slovak Republic), ‘nationality’ is understood as an affiliation with a particular ‘nation’ (a group of people defined by common language, geographical and cultural roots etc.) or ethnic group. Thus, ‘nationality’ is often understood as meaning ‘ethnicity’, including in the practice of state bodies and public institutions.

⁷⁵ Finding of the Constitutional Court of the Slovak Republic, I. ÚS 17/99, 22 September 1999.

⁷⁶ See the Finding of the Constitutional Court of the Slovak Republic, PL. ÚS 8/04-202, 18 October 2005, available at <https://www.ustavnysud.sk/vyhľadavanie-rozhodnuti#!DecisionsSearchResultView>.

⁷⁷ Such as marital and family status, which are covered, for example, by the Anti-discrimination Act or by the Labour Code.

⁷⁸ The Constitutional Court has already stated that the fact of being a minister of a certain church constitutes just such ‘another status’ and hence such a person cannot be advantaged or disadvantaged on this ground. See the finding of the Constitutional Court of the Slovak Republic, No III. ÚS 64/00-65, 31 January 2001.

⁷⁹ See the Finding of the Constitutional Court, PL. ÚS 8/04-202, 18 October 2005, paragraph 13.

Thus, these provisions cannot be enforced against private actors.

2 THE DEFINITION OF DISCRIMINATION

2.1 Grounds of unlawful discrimination explicitly covered

Grounds explicitly covered by the Constitution: sex, race, skin colour, language, belief, religion, political affiliation or conviction, national or social origin, nationality or ethnic origin, property, lineage/gender or any other status.⁸⁰ The Constitutional Court has also confirmed that sexual orientation is a constitutionally prohibited ground of discrimination.⁸¹

Grounds explicitly covered by the Anti-discrimination Act (relevant for the fields of 'labour relations and related legal relations, social security, healthcare, provision of goods and services and in education') are:⁸² sex, religion or belief, race, affiliation with nationality or an ethnic group, disability, age, sexual orientation, marital status and family status, colour of skin, language, political or other opinion, national or social origin, property, lineage/gender or other status, or the reason of reporting criminality or other anti-social activity.⁸³

Grounds explicitly covered by other laws (in addition to those listed in the Anti-discrimination Act) are, for example, trade union activities,⁸⁴ unfavourable state of health⁸⁵ and genetic features.⁸⁶

2.1.1 Definition of the grounds of unlawful discrimination within the directives

a) Racial or ethnic origin

The terms racial origin and ethnic origin are used in the provisions of many laws (especially in connection with anti-discrimination provisions or provisions prohibiting racism and intolerance), albeit without any legal definitions.

Criminal law literature and commentaries state that race means a group of people differing from others due to various typical features, especially physical ones (e.g. colour of skin), regardless of the fact that the members of the race concerned live within the territory of the state.

Criminal law literature characterises an 'ethnic group' as a

'historically formed group of people connected by common history, distinct cultural features (mainly language) and common mentality, traditions, and possibly a distinct way of life. Representatives of a given ethnic group have their own name ... and have an understanding of mutual belonging and at the same time distinctiveness from other communities. An ethnic group usually exists beyond the borders of one state. In Slovakia an example would be the Roma'.⁸⁷

The Supreme Court confirmed in 2013 that the Roma represent an ethnic group.⁸⁸

The Slovak courts have a strong tendency to interpret the concept of (Roma) ethnicity, in the context of hate speech and hate crimes, narrowly. Evidence of this can also be found

⁸⁰ See Article 12(2) of the Constitution.

⁸¹ See the Finding of the Constitutional Court of the Slovak Republic, PL. ÚS 8/04-202, 18 October 2005.

⁸² Slovakia, Anti-discrimination Act, 365/2004, Section 3(1).

⁸³ Slovakia, Anti-discrimination Act, 365/2004, Section 2(1).

⁸⁴ Slovakia, Act No 311/2001 Labour Code, as amended (*zákon č. 311/2001 Z. z. Zákonník práce v znení neskorších predpisov*), 1 April 2002, Section 13(2).

⁸⁵ See Slovakia, Labour Code, 311/2001, Article 1 of the Basic Principles.

⁸⁶ See Slovakia, Labour Code, 311/2001, Article 1 of the Basic Principles and Section 13(2).

⁸⁷ Samaš, O., Stiffel, H, Toman, P (2006), *Trestný zákon – Stručný komentár* (The Criminal Code: a brief commentary), Bratislava, Iura Edition, spol. s r. o., pp. 301-302.

⁸⁸ Decision of the Supreme Court of the Slovak Republic, 4 Tdo 49/2012, 19 March 2013, pp. 7-8.

in the decision of the Supreme Court of 2013.⁸⁹ The Supreme Court argued, inter alia, that the word 'Gypsy' (both as a noun and as an adjective) belongs to a group of words that are frequently used as a part of the codified state language, and that the usage of this word alone cannot indicate that a crime of defamation of nation, race and conviction pursuant to Section 423(1) of the Criminal Code has been committed.⁹⁰

b) Religion and belief

Slovak law provides no definition of the terms religion and belief. The Criminal Code instead uses the expression 'confession/creed', which is explained in law commentaries as 'the active or passive relation to a particular religion as to the general theory of the interpretation of the world presented by a particular faith'.⁹¹

Act 308/1991 on Freedom of Religious Belief and the Status of Churches and Religious Societies uses the concept of religious belief but fails to define it. For the purposes of the act, any person professing a religion is considered to be a believer. The agreement on religious education⁹² between the Slovak Republic and the registered churches and religious societies deals only with 'religion' as defined by the doctrine of churches or religious societies registered in Slovakia:

'religion and religious education is taught according to the educational programmes and curricula approved by a registered church or religious society after receiving an opinion of the Ministry of Education of the Slovak Republic'.⁹³

The Slovak legal system makes no clear distinction between religion, confession/creed and belief.

Both the Constitution and the Anti-discrimination Act state explicitly that discrimination against a person without a religion shall be deemed to be discrimination on the ground of religion or belief. In 2001, the Constitutional Court also stated that the fact that someone is a minister of a certain church constitutes 'another status' (a formulation at the end of the list of prohibited grounds of discrimination contained in the Slovak Constitution) and hence such a person must not be advantaged or disadvantaged on this ground.⁹⁴

Act 308/1991 on Freedom of Religious Belief and the Status of Churches and Religious Societies stipulates rules for the registration of churches and religious societies in Slovakia. Under these rules, a church or a religious society can be registered only when it submits a statutory declaration from 50 000 adult members confirming their membership of the church or religious society, their permanent residency in Slovakia and Slovak citizenship. The registration process is important, since only registered churches and religious societies are legally acknowledged by the state. The registered churches and religious societies have significant advantages (with regard to the legal and economic environment in which they operate) in comparison with those that are not registered, which can lead to discrimination against individuals belonging to non-registered churches and religious societies.⁹⁵

⁸⁹ Decision of the Supreme Court of the Slovak Republic, 4 Tdo 49/2012, 19 March 2013.

⁹⁰ Decision of the Supreme Court of the Slovak Republic, 4 Tdo 49/2012, 19 March 2013, pp. 6-7.

⁹¹ See e.g., Stiffel, H., Kočica, J. (2001), *Trestný zákon: Stručný komentár* (The Criminal Code: A Brief Commentary), Bratislava, p. 403.

⁹² Slovakia, Agreement between the Slovak Republic and Registered Churches and Religious Societies regarding Religious Education, published in the Collection of Laws under No. 395/2004.

⁹³ Slovakia, Agreement between the Slovak Republic and Registered Churches and Religious Societies regarding Religious Education, 395/2004, Article 2(7).

⁹⁴ See the finding of the Constitutional Court of the Slovak Republic, III. ÚS 64/00-65, 31 January 2001.

⁹⁵ Only registered churches and religious societies can legitimately claim state support (including payment of clergy or exemption from taxation), organise religious education in schools, establish their own schools (partly funded by the state), and establish and run hospitals and social services facilities etc. Small churches that cannot be registered do not exist legally; they can only be established as civil society organisations.

c) Disability

Neither the Anti-discrimination Act nor other acts include the definition of disability that is to be used in the area of anti-discrimination. Disability (or some aspects of it) is defined by social security, employment and school legislation for the purposes of those areas (the duty to apply the principle of equal treatment in relation to disability applies to all of them).

The Labour Code defines an 'employee with a disability' as an employee who is officially acknowledged as disabled on the basis of the Social Insurance Act⁹⁶ and who submits to their employer a decision proving entitlement to a disability pension.⁹⁷ The Social Insurance Act defines the following conditions to qualify for a disability pension:

- at least 40 % loss of the ability to work (when compared to a 'healthy' person);
- attainment of a sufficient number of years of pension insurance;
- long-term unfavourable state of health, i.e. state of health causing a loss of ability to perform gainful activities, which is expected, on the basis of medical assessment, to last at least one year.⁹⁸

In addition, Article 1 of the Basic Principles of the Labour Code and Section 13(2) of the Labour Code prohibit discrimination on the ground of unfavourable state of health and on the ground of genetic characteristics.

A similar test for determining whether someone has a disability is used by the Employment Services Act,⁹⁹ which regulates the system of institutions and measures to support and help participants in the labour market. This act considers a person with a disability to be a citizen who is officially registered disabled in accordance with the Social Insurance Act and who can also prove their disability with a decision or a notification from the Social Insurance Agency.¹⁰⁰

The Act on Benefits for Compensation of Serious Disability¹⁰¹ uses the term 'serious disability' and defines it as a 'disability with a level of functional impairment of at least 50 %'.¹⁰² 'Functional impairment' is defined as a lack of physical ability, sensory ability or mental ability with a prognosis in excess of 12 months.¹⁰³

It is possible that state authorities, as well as courts, will in some cases base their understanding of the concept of 'disability' on the legal definitions listed above. This may become problematic, especially in cases where the concept of disability being defined falls outside the scope of employment. However, it must be considered that the Anti-discrimination Act also prohibits discrimination on the grounds of past disability and presumed disability ('discrimination against a person who could be presumed, based on external signs, to have a disability').¹⁰⁴ It should also be borne in mind that Slovakia signed and ratified the Convention on the Rights of Persons with Disabilities (CRPD), which, in conjunction with Article 7(5) of the Slovak Constitution, takes precedence over Slovak laws, and the Supreme Court has already confirmed this principle in a case that concerned

⁹⁶ Slovakia, Act. No 461/2003 on Social Insurance, as amended (*Zákon č. 461/2003 Z. z. o sociálnom poistení v znení neskorších predpisov*), 30 October 2003.

⁹⁷ Slovakia, Labour Code, 311/2001, Section 40(8).

⁹⁸ Slovakia, Social Insurance Act, 461/2003, Sections 70-72.

⁹⁹ Slovakia, Act No 5/2004 on employment services and on changing and supplementing other laws, as amended (*Zákon č. 5/2004 Z. z. o službách zamestnanosti a o zmene a doplnení niektorých zákonov v znení neskorších predpisov*), 4 December 2003.

¹⁰⁰ Slovakia, Employment Services Act, 5/2004, Section 9.

¹⁰¹ Slovakia, Act No 447/2008 on Benefits for Compensation of Serious Disability, amending and supplementing certain laws, as amended (*Zákon č. 447/2008 Z. z. o peňažných príspevkoch na kompenzáciu ťažkého zdravotného postihnutia a o zmene a doplnení niektorých zákonov, v znení zákona č. 8/2009 Z. z.*), 29 October 2008.

¹⁰² Slovakia, Act on Benefits For Compensation Of Serious Disability, 447/2008, Section 2(3).

¹⁰³ Slovakia, Act on Benefits For Compensation Of Serious Disability, 447/2008, Section 2(4).

¹⁰⁴ Slovakia, Anti-discrimination Act, 365/2004, Section 2a(11)(d).

the right of a child with a disability to inclusive education.¹⁰⁵ Therefore, for anti-discrimination purposes, the concept of disability should be understood much more broadly than the restrictive legal definitions that apply in fields covered by specific laws, mainly in the context of employment and social insurance.

Neither the Constitutional Court nor the Supreme Court has provided any explicit and comprehensive interpretative framework for the concept of disability as yet. However, in a case concerning an individual with psychosocial and intellectual disabilities,¹⁰⁶ which were not temporary, the Constitutional Court took it as a given that the complainant had a disability (without examining the complainant's circumstances in relation to national, EU and international legal definitions of disability).¹⁰⁷ The Constitutional Court also included an *obiter dictum* in this particular decision, which, while not defining disability, provided some hints on the court's perception of the legal definition of disability as a social concept. In particular, the Constitutional Court stated:

'Experts nowadays (and in Slovakia, it is more jurisprudence and legal theory – a [court's] note) perceive disability as well as the rights of people with disabilities differently from in the past. Today, disability is not only understood within a medical (individual) framework but the meanings of the social and legal framework are also increasing – which, when compared to the past, integrate the values that represent the substrate of human rights, such as respect and the protection of dignity (...).'¹⁰⁸

In a case that concerned the right of a child with special educational needs stemming from a combination of disabilities and disadvantages (Down's syndrome, an intellectual disability, a hearing impairment and a belated talking ability), the Supreme Court implicitly took it as a given that the claimant had a disability.¹⁰⁹

The Schools Act,¹¹⁰ regulating legal relations in the field of primary and secondary education and in related facilities, defines a 'child with a disability or a pupil with a disability' in section 2(l) as a child or a pupil with a

'mental¹¹¹ disability, hearing impairment, visual impairment, physical impairment, communication ability disorder, autism, or with other pervasive developmental disorders, or with multiple disabilities'.

The Schools Act also uses the term 'health disadvantage'. A child or a pupil with a 'health disadvantage' is defined, in section 2(k), as a child or a pupil: with a 'disability'; or who is 'ill or their health is impaired'; or who has 'developmental disorders', or a 'behavioural disorder'.

¹⁰⁵ Decision of the Supreme Court of the Slovak Republic, ref. No 7Sžo/83/2014, 24 September 2015, available at: http://diskriminacia.sk/wp/wp-content/uploads/rozsudok_NS_2015_inkluzivne_vzdel.pdf. The Supreme Court held that the CRPD 'was incorporated into the Slovak legal order, and hence is a part of it, with a regime of preferential application in relation to the national law (Article 7(5) of the Constitution). ... Due to the [CRPD's] legal force, it was the duty of the administrative bodies to interpret the particular provisions of the [Slovak] Schools Act in accordance with the Convention on the Rights of Persons with Disabilities, or the administrative bodies could directly apply the rules of international law contained in the Convention' (p. 9 of the decision).

¹⁰⁶ However, the disability of the complainant concerned was not clear from the decision – the Constitutional Court did not deal with the particular type of disability and the courts of first and second instance used disability terminology confusingly, randomly and interchangeably (in a literal translation, the courts of first and second instance used the terms 'psychiatric disorder' and 'mental disability'). The expert opinions issued during the proceedings, and to which the courts of first and second instance referred, used the terms (in a literal translation) 'psychiatric disorder' and 'mental retardation'.

¹⁰⁷ Finding of the Constitutional Court of the Slovak Republic, I. ÚS 313/2012-52, 28 November 2012.

¹⁰⁸ Finding of the Constitutional Court of the Slovak Republic, I. ÚS 313/2012-52, 28 November 2012, paragraph 34.

¹⁰⁹ Decision of the Supreme Court of the Slovak Republic, ref. No 7Sžo/83/2014, 24 September 2015.

¹¹⁰ Slovakia, Act No. 245/2008 on Education (Schools Act), as amended (*zákon č. 245/2009 Z. z. o výchove a vzdelávaní (školský zákon) a o zmene a doplnení niektorých zákonov v znení neskorších predpisov*), 22 May 2008.

¹¹¹ In Slovak, the act uses the word 'mental' (and not, for example, 'intellectual').

d) Age

Slovak law provides no specific definition, and neither does case law.

e) Sexual orientation

Slovak legislation provides no specific definition, and neither does case law.

2.1.2 Multiple discrimination

In Slovakia, multiple discrimination is not prohibited in the law.

There are no legal rules or case law that would explicitly deal with situations of multiple discrimination. The concept sometimes appears in policy documents but its use is more often theoretical rather than relating to the proposal and implementation of specific measures.

Section 2(1) of the Anti-discrimination Act, when listing the prohibited grounds of discrimination, does not contain any explicit prohibition of multiple discrimination. However, nor does it say that discrimination or other breaches of the duty to observe the principle of equal treatment must take place on individual prohibited grounds of discrimination. Thus, it could be argued that the concept of prohibition of multiple discrimination is contained in the act implicitly (although it will be up to the courts to establish this interpretation more authoritatively, which has not happened so far).

In Slovakia, limited case law deals with multiple discrimination. The multiple discrimination element has either not been dealt with by the courts, or the cases are still pending.

The only known cases where multiple discrimination has been invoked were cases relating to multiple discrimination against Roma women (with the multiple grounds of discrimination being sex/gender and ethnicity) initiated by the Centre for Civil and Human Rights (Poradňa pre občianske a ľudské práva),¹¹² an NGO based in Košice.

The Centre for Civil and Human Rights initiated a case, using the concept of *actio popularis* (to sue the state) against a provision in the Act on Childbirth Allowance¹¹³ that conditions the provision of such subsidy on the woman not leaving the healthcare facility (in practice, a maternity hospital) upon giving birth without the consent of the healthcare facility. The Centre for Civil and Human Rights argued that the provision is specifically discriminatory against Roma women who are in very vulnerable positions and who, for various reasons, including ill-treatment by the maternity hospitals, often leave the hospital upon giving birth without being given the consent of the hospital. The case was dismissed by the court of first instance in May 2014¹¹⁴ and by the appeal court in September 2017.¹¹⁵ The case is now pending before the Slovak Supreme Court. The lower courts in their reasoning focused only on argumentation regarding the form of discrimination (indirect discrimination), but did not provide any specific argumentation regarding discriminatory grounds. See also section 3.2.7 of this report.

In 2013, the Centre for Civil and Human Rights submitted an *actio popularis* against a state-run hospital in Eastern Slovakia and at the same time against the Ministry of Health

¹¹² See <https://www.poradna-prava.sk/en/>.

¹¹³ Slovakia, Act No 383/2013 on Childbirth Allowance and on Allowance on More Concurrently Born Children and on changing and supplementing other laws (zákon č. 383/2013 Z. z. o príspevku pri narodení dieťaťa a príspevku na viac súčasne narodených detí a o zmene a doplnení niektorých zákonov), 23 October 2013. The relevant provision against which the Centre for Civil and Human Rights filed its lawsuit is Section 3(4)(b).

¹¹⁴ Decision of the District Court Bratislava I, ref. No 12C 231/2010-132, of 16 May 2014.

¹¹⁵ Decision of the Regional Court in Bratislava, ref. No. 14 Co 552/2014 – 180, of 26 September 2017.

and the Slovak Republic.¹¹⁶ The *actio popularis* concerns segregation of Roma women in maternity hospitals and qualifies it as discrimination on the (multiple) grounds of ethnicity and sex. The case is still pending before the first instance court.

2.1.3 Assumed and associated discrimination

a) Discrimination by assumption

In Slovakia, discrimination based on a perception or assumption of a person's characteristics, is prohibited in national law.

Discrimination based on perception or assumption of what a person is, is prohibited by the Anti-discrimination Act, Section 3(3) and Section 2a(11)(d) (assumed discrimination on the ground of disability). There is no case law addressing assumed discrimination.

Section 3(3) of the Anti-discrimination Act stipulates that, in determining whether discrimination has occurred, no account shall be taken of whether the underlying reasons were based on facts or mistaken beliefs.

According to Section 2a(11)(d) of the Anti-discrimination Act, discrimination on grounds of past disability or discrimination against a person who could be presumed, based on external signs, to have a disability, are deemed to constitute discrimination based on disability.

b) Discrimination by association

In Slovakia, discrimination based on association with persons with particular characteristics, is prohibited in national law.

Discrimination based on association with persons with particular characteristics is prohibited by the Anti-discrimination Act, Sections 2a(11)(b) and (c).

There is no case law dealing with discrimination by association.

Sections 2a(11)(b) and (c) of the Anti-discrimination Act state that discrimination on the ground of someone's relationship with a person of a particular racial, national or ethnic origin will also be deemed to constitute discrimination based on racial, national or ethnic origin, and that discrimination on grounds of someone's relationship with a person of a particular religion or belief, or discrimination against a natural person without a religion, will be deemed to constitute discrimination based on religion or belief.

These rules are, in principle, in compliance with the judgment in *Coleman v Attridge Law and Steve Law*,¹¹⁷ although the Anti-discrimination Act does not explicitly refer to association with a person with a disability (or to association with people possessing or presumed to possess other characteristics covered by the other prohibited grounds of discrimination contained in the Anti-discrimination Act).

2.2 Direct discrimination (Article 2(2)(a))

a) Prohibition and definition of direct discrimination

In Slovakia, direct discrimination is prohibited in national law. It is defined.

The Anti-discrimination Act prohibits direct discrimination in Section 2a(1). For such discrimination to occur it has to take place in connection with a prohibited ground or grounds, listed in Section 2(1) (see also section 2.1 of this report).

¹¹⁶ The case is conducted before the District Court Bratislava III under ref. No 14 C 288/2014.

¹¹⁷ Court of Justice of the EU, C-303/06 *S. Coleman v Attridge Law and Steve Law*, 17 July 2008.

There have been several cases of direct discrimination decided and pending before national courts. However, in their decisions, the courts have not based their reasoning on this form of discrimination, but have focused instead on general reasoning about the violation of the principle of equal treatment (for more details on relevant cases see sections 3.2 and 12.2 of this report).

Section 2a(2) of the Anti-discrimination Act defines direct discrimination as 'any action or omission where one person is treated less favourably than another is, has been or would be treated in a comparable situation.'

b) Justification for direct discrimination

The Anti-discrimination Act does not permit any general justification of direct discrimination.

There are a number of specific exceptions, called 'permissible differential treatment',¹¹⁸ which will be dealt with in sections 4 and 5 of this report.

2.2.1 Situation testing

a) Legal framework

In Slovakia, situation testing is not clearly permitted in national law. The term 'situation testing' is not used in national legislation. However, the possible use of situation testing follows the general admissibility conditions for evidence in civil courts.

The Civil Dispute Act stipulates that the only admissible evidence is evidence that has been obtained legally.¹¹⁹ However, the act provides an exception to this rule, in particular in a situation where the 'justifiability of taking such evidence acquired contrary to the law is provided for by applying Article 3(1) [of the basic principles of the act]'.¹²⁰ Article 3(1) of the basic principles stipulates that each provision of the act requires interpretation that is in accordance with the Constitution, with public order, with the principles on which the act is based, with international obligations of the Slovak Republic that take precedence over laws, with case law of the ECtHR and CJEU, and with permanent regard to the values that are protected by these sources. The explanatory report that was submitted by the Government when it proposed the act makes it clear that proceedings concerning discrimination should be an example of cases where the exception will be applied.¹²¹

Thus, although situation testing is not specified in domestic legislation, the general definition of 'evidence' makes situation testing possible in principle and the courts basically accept it.

b) Practice

In Slovakia, situation testing is used in practice. However, the use of situation testing is not widespread and is mainly carried out by NGOs and the Slovak Trade Inspectorate during its monitoring of discrimination in access to goods and services. In particular, the Inspectorate uses situation testing to address complaints of discrimination in relation to Roma being denied access to restaurants or pubs in some localities.

¹¹⁸ Slovakia, Anti-discrimination Act, 365/2004, Sections 8 and 8a.

¹¹⁹ Slovakia, Civil Dispute Act, 160/2015, Section 187 and basic principles of the act, Article 16(2).

¹²⁰ Slovakia, Civil Dispute Act, Article 16(2) of the basic principles of the act.

¹²¹ Explanatory Report to the Governmental Proposal of the Civil Dispute Act - Special Part (*Dôvodová správa k vládnemu návrhu Civilného sporového poriadku - osobitná časť*), p 4. available at <http://www.nrsr.sk/web/Default.aspx?sid=zakony/cpt&ZakZborID=13&CisObdobia=6&ID=1333>.

The courts usually do not have a problem with accepting evidence gained as a result of testing (witness testimonies, audio recordings). However, the fact of evidence being gained through testing seems to have an impact on the amount of non-pecuniary compensation awarded to claimants relying on testing: if situation testing has been used as evidence, the courts usually do not award non-pecuniary compensation or award it only at a symbolic level.

The Slovak NGO Centre for Civil and Human Rights (Poradňa pre občianske a ľudské práva), has already successfully litigated a few discrimination cases using this method (mainly cases of racial discrimination in access to goods and services and access to employment). The testing involves creating comparable situations on the spot and securing the evidence (testimonies, audio recordings and transcripts of the audio recordings).

The first important case where evidence was gathered through testing concerned racial discrimination in access to services. The case concerned three Roma activists who were refused access to a bar for the reason that they did not own a 'club card', which is a condition for entering the bar. They made a sound recording of their encounter with the bar personnel, as well as a sound recording of non-Roma activists from the Centre for Civil and Human Rights who followed them a few minutes later and had no problem entering without any 'club card'. Although the courts accepted the sound recording and ordered the owner to issue a written apology, they did not grant the financial compensation requested. The courts reasoned, inter alia, that the effect on the claimants' personal dignity was not serious enough to order financial compensation, as the claimants must have expected the discrimination, given that the whole action was planned.¹²²

The claimants submitted the case to the Constitutional Court, which rejected their complaint as ill-founded.¹²³ On 15 August 2014, the case was decided by the Committee on the Elimination of Racial Discrimination,¹²⁴ which did not find a violation of the Convention on the Elimination of All Forms of Racial Discrimination (CERD).¹²⁵

Another case where situation testing has been used in order to gather evidence in cooperation with the Centre for Civil and Human Rights, was the case of a Roma man who sued a mobile operator. He claimed he was discriminated against in access to services on the ground of his Roma ethnic origin. When trying to buy a fixed tariff phone service from a mobile operator he was asked to provide confirmation that he was employed, while non-Roma customers in a comparable situation were not requested to do so. During the court proceedings the court heard the audio recording and also heard non-Roma customers from the NGO. The court held that given the fact that the recording was made in the defendant's publicly accessible premises and did not affect the privacy of any of the persons present, the use of the recording as a form of evidence was not conditional on the defendant's consent.¹²⁶ The court also rejected the suggestion that the fact that the claimant prepared his evidence in order to prove discriminatory treatment renders this type of evidence inadmissible. The appeal court also held that if a claimant submits a transcription of a

¹²² Decision of the Regional Court in Košice, No. 2 Co 115/2008 of 15 July 2010.

¹²³ Decision of the Slovak Constitutional Court, No. I.ÚS 43/2011 of 3 February 2011.

¹²⁴ The Committee on the Elimination of Racial Discrimination is the body of independent experts that monitors implementation of the Convention on the Elimination of All Forms of Racial Discrimination by its State parties. As part of its tasks, the committee examines individual complaints against States (after exhaustion of national remedies).

¹²⁵ CERD, *L.A et al v. Slovak Republic*, CERD/C/85/D/49/2011, Communication No 49/2011, (officially available at CERD/C/85/D/49/2011, para 7.2).

¹²⁶ Decision of the Regional Court in Košice, No. 1Co/334/2008-238, 18 March 2010. The case has been decided on merits again by the first instance court (decision of the District Court Spišská Nová Ves, No. 5 C 266/2005 – 544 confirming racial discrimination). This decision was overturned by the Regional Court in Košice's decision, No. 5 Co 197/2012 of 18 September 2013, which rejected the claim, stating that the defendants were not responsible for discriminatory treatment. The Supreme Court in its decision No. 3 Cdo405/2015 and 3 Cdo 406/2015 of 8 December 2016 rejected the claimant's extraordinary appeal concluding that it agreed with the appeal court's reasoning on the lack of responsibility of the defendants. The case is now pending before the Constitutional Court. The decision of the Supreme Court is available at: <https://www.nsud.sk/data/att/46092.pdf>.

sound recording, the court should compare it with the recording itself so that its credibility can be verified. With regard to testing, the court said explicitly that 'for the purpose of acquiring comparative information, testing by means of which a comparator organises a comparable situation to that of the claimant is admissible as evidence'.

The court specified that,

'the situations of the claimant and the comparator do not have to be absolutely identical, i.e. they do not have to ask absolutely the same questions but the questions (possibly formulated differently) must be directed at obtaining information about the same thing (...). The testing does not have to be performed in relation to the same employee of the entity involved [the defendant in this case], because it is not the conduct of a particular employee which is at stake but that of the entity in the name of which the employee communicates with the person interested in the services of this entity.'

2.3 Indirect discrimination (Article 2(2)(b))

a) Prohibition and definition of indirect discrimination

In Slovakia, indirect discrimination is prohibited in national law. It is defined.

According to Section 2a(3) of the Anti-discrimination Act, indirect discrimination means:

'an apparently neutral regulation, decision, instruction or practice that puts or could put a person at a disadvantage as compared with another person, unless such regulation, decision, instruction or practices are objectively justified by following a legitimate aim and are appropriate and necessary to achieving that aim.'

There are three differences between the definitions of indirect discrimination contained in the directives and the definition contained in the Anti-discrimination Act, all of which seem to go beyond the scope of the directives.

The first difference is that, whereas the definition contained in the directives requires that the provision, criterion or practice in question 'would put' persons with a particular feature at a disadvantage, the definition in the Slovak Anti-discrimination Act is more concrete and admits both actual disadvantage ('puts at a disadvantage') as well as the possibility of disadvantage ('could put at a disadvantage').

The second difference is that, whereas the directives require a 'particular disadvantage' to take place in order to qualify certain treatment as indirectly discriminatory, the definition of indirect discrimination contained in the Slovak Anti-discrimination Act only requires a 'disadvantage'. It can thus be argued that, with regard to the concept of disadvantage, the Slovak definition may be even more favourable than the concept of 'particular disadvantage' as interpreted by the CJEU in *CHEZ*.¹²⁷ However, judicial interpretation of the concept of 'disadvantage' in cases of indirect discrimination is still lacking in Slovakia.

The third difference is that the definition contained in the Anti-discrimination Act does not apply the 'collective approach' ('persons') but takes an individual approach ('person'). This may lead to more favourable conditions for proving indirect discrimination (there might be no need to provide very precise and significant statistical evidence), although it is unclear yet how the individualised concept of indirect discrimination will be applied.

Although several cases of claimed indirect discrimination are pending before domestic courts, the decisions of the courts do not have specific reasoning on the definition of

¹²⁷ CJEU, Case C-83/14 *CHEZ Razpredelenie Bulgaria AD v Komisia za zashtita ot diskriminatsia*, judgment of 16 July 2015, para 109.

indirect discrimination. For example, in 2018, a district court decided a case of discrimination against a Roma child in access to education. In addition to other claims, the claimant sued the Slovak Republic, represented by the Ministry of Education of the Slovak Republic, (the ministry) for indirect discrimination, as he found the state policy of placing Roma children into special classes and schools to be discriminatory. The court did not provide any specific arguments on this claim regarding the definition of indirect discrimination, but only generally stated that in the claimant's individual case it did not find discrimination¹²⁸ (for more details see section 12.2. of this report).

b) Justification test for indirect discrimination

Indirect discrimination can be objectively justified by a legitimate aim if the regulation, decision, instruction or practice in question is appropriate and necessary to achieve that aim.

The domestic courts dealt with indirect discrimination and its justification in a case on discriminatory provisions in the Act on Childbirth Allowance, which was initiated by the Centre for Civil and Human Rights as an *actio popularis* claim (described above in section 2.1.2 of this report). The NGO as claimant argued that such a provision is discriminatory and as it constitutes indirect discrimination against Roma women based on sex and ethnic origin. The provision in question conditions the provision of the subsidy on the woman not leaving the healthcare facility (in practice, a maternity hospital) upon giving birth without the consent of the healthcare facility. In its decision no. 12 C 231/2010 of 16 May 2014, the District Court Bratislava I dismissed the case, concluding that there was no indirect discrimination because the provision is objectively justified as it pursues the legitimate aim of protecting the health of the child and the mother. The court also reasoned that the provision is universal, and puts nobody in either a favourable or a disadvantaged position. The court did not provide any justification as to whether the measures to achieve the aim are appropriate and necessary. The court's decision lacks any justification test for indirect discrimination.¹²⁹

The decision of the first instance court has been confirmed by the appeal court, which fully complied with the reasoning of the first instance court. The appeal court considered the lawsuit to be based on hypothetical assumptions and concerned unspecified cases of alleged discrimination against Roma mothers, stating that the alleged indirect discrimination could be claimed before a court only by directly affected individuals. This would enable the court to thoroughly assess whether specific persons were discriminated against by the challenged legal provision. The appeal court only examined whether the challenged legal provision fulfilled a legitimate aim, but did not consider its adequacy and necessity with regard to the documented negative impact on Roma women from socially disadvantaged environments and their children.¹³⁰ The case is now pending before the Slovak Supreme Court.

2.3.1 Statistical evidence

a) Legal framework

In Slovakia, there is legislation regulating the collection of personal data.

In particular the new Act on Protection of Personal Data, transposing the EU General Data Protection Regulation, entered into force on 26 May 2018.¹³¹

¹²⁸ Decision of District Court in Malacky, 17 May 2018, n. 5C/212/2014.

¹²⁹ Decision of the District Court Bratislava I, No. 12 C 231/2010 of 16 May 2014.

¹³⁰ Decision of the Regional Court in Bratislava, n. 14Co/552/2014 – 180 of 26 September 2017.

¹³¹ Slovakia, Act No 18/2018 on Protection of Personal Data and on changing and supplementing other laws, (zákon č. 18/2018 Z. z. o ochrane osobných údajov a o zmene a doplnení niektorých zákonov).

According to Section 16(1) of the Act on Protection of Personal Data, the 'processing of personal data which reveal racial or ethnic origin, political opinion, religious belief, philosophical beliefs, trade unions membership, genetic data, biometric data, data concerning health or data concerning a natural person's sex life or sexual orientation is prohibited'. However, the legislation in Section 16(2) lists the conditions under which such data can be collected. The listing is fully in line with Article 9(2) of the GDPR in terms of the listed conditions though it does not provide for its exact wording.

In Slovakia, statistical evidence is permitted by national law in order to establish indirect discrimination. As has been stated in detail in section 2.2.1 of this report, the use of statistical evidence before the courts follows the general admissibility conditions of evidence set by legislation.

b) Practice

In Slovakia, statistical evidence in order to establish indirect discrimination is used in practice.

However, the use of statistical evidence is very scarce. One reason for this may be the lack of sufficient volumes of relevant data collected by the state, under its international and national human rights obligations (the fact that there is no data means that such data cannot be used in court). Equally, the Slovak National Centre for Human Rights (the national equality body), which is obliged, among other things, to monitor the situation in the field of equality and (non)discrimination, is not fulfilling its duty in a satisfactory manner (see section 7 below for more detail). Furthermore, in general, neither public institutions nor employers collect statistics. Some statistics or other sets of data have been collected by NGOs and academics.

When the concept of indirect discrimination does start to be invoked,¹³² the Slovak courts are likely to look to other countries and/or the CJEU and/or the ECtHR for inspiration. However, since the concept of indirect discrimination is individualised under Slovak legislation (see section 2.3.1(a)), as compared to the group approach adopted in most jurisdictions, inspiration taken from European or foreign courts could in practice lead to an unjustifiably and illegitimately restrictive interpretation of the Slovak legislation in force (the courts may seek more 'solid' statistical evidence than might be required by the Slovak legislation, which relies on an individualised rather than a group approach to indirect discrimination).¹³³

The relevant cases, with legal representation provided by the Centre for Civil and Human Rights, concerned discrimination claims connected to a refusal by an office of labour, social affairs and family to pay a childbirth allowance to Roma women, pursuant to a law that was, as the Centre for Civil and Human Rights argued, indirectly discriminatory (see section 3.2.7 for more details). The Centre for Civil and Human Rights used its own statistical data, obtained through fact-finding and surveys (e.g. figures on ethnicity of patients from hospitals in Eastern Slovakia, and numbers of refusals by offices of labour, social affairs and family in regions with a large Roma population). Although the courts ruled in administrative court proceedings in favour of the Roma women and ordered the offices of

¹³² So far, there have been only very few instances when claimants have claimed indirect discrimination – and in these few cases the courts held correctly that indirect discrimination had not taken place; on the other hand, there have been a few cases where indirect discrimination, although not claimed by claimants, was identified by courts, but in only one of the cases was the identification correct (for more information, see Durbáková, V., Holubová, B., Ivanco, Š., Liptáková, S. (2012), *Hľadanie bariér v prístupe k účinnej právnej ochrane pred diskrimináciou*, (Searching for barriers in access to effective legal protection from discrimination) Košice: Poradňa pre občianske a ľudské práva, pp. 78-79, available at: <https://www.poradna-prava.sk/sk/dokumenty/diskriminacia-na-slovensku-hladanie-barier-v-pristupe-k-ucinnej-pravnej-ochrane-pred-diskriminaciou/>.

¹³³ See for example the restrictive interpretation in the decision of the Regional Court in Bratislava, No. 14 Co 552/2014 – 180 from 26 September 2017.

labour, social affairs and family to pay the childbirth allowance and the Supreme Court upheld the decisions, none of the courts dealt with the alleged indirectly discriminatory nature of the claim or the statistics submitted, and the proposal to bring a preliminary question before the CJEU was also ignored. Thus, in 2010, the Centre for Civil and Human Rights submitted an *actio popularis* on the same matter, using the same statistical data (the centre sued the Slovak Republic for adopting a provision that is discriminatory – see sections 2.1.2 and 2.3). The case is pending before the Slovak Supreme Court after it was dismissed by the first instance and appeal courts.¹³⁴

In some of its other cases, the Centre for Civil and Human Rights has also relied on data collected by public institutions. From experience, the centre has found that many primary schools tend to collect their own unofficial data about the number of Roma pupils based on third-party identification made by school personnel, although they may be reluctant to provide such data. The centre is currently litigating three *actio popularis* lawsuits before Slovak courts addressing the segregation of Roma children in education, while relying on the ethnic data from *Atlas of Roma Communities 2013* (a large sociographic mapping of Roma communities) and/or data obtained directly from the relevant schools based on written requests. So far, the relevance of this data has never been questioned in the court proceedings.¹³⁵ However, the centre did not claim indirect discrimination in these cases and addresses racial segregation of Roma children as a form of direct discrimination.

2.4 Harassment (Article 2(3))

a) Prohibition and definition of harassment

In Slovakia, harassment is prohibited in national law. It is defined.

Section 2a(4) of the Anti-discrimination Act defines harassment as

‘such conduct which results or can result in an intimidating, hostile, shameful, humiliating, insulting, degrading or offensive environment and the purpose or effect of which is or can be violation of freedom or human dignity.’

It should be noted that the definition of harassment does not explicitly stipulate that the conduct must be unwanted. This may lead to interpretations under which courts or defendants would require the application of ‘objectivity tests’ with regard to the capacity of the environment in question to meet the required statutory characteristics. The full material scope of protection against harassment of both directives is covered by domestic anti-discrimination legislation.

It is also worth noting that the general provision on prohibition of discrimination on the grounds contained in Section 2(1) of the Anti-discrimination Act (‘observing the principle of equal treatment shall lie in prohibition of discrimination on the ground of sex, religion or belief, race...’) provides the basic framework for applying the provisions on particular forms of discrimination in relation to the prohibited grounds (the definitions of the particular forms of discrimination do not reiterate that discrimination must take place on the prohibited grounds but rather implicitly include the general definition contained in Section 2(1), which states that discrimination must take place on the prohibited grounds). Therefore it can be argued that the definition of harassment contained in the Anti-

¹³⁴ Decision of the District Court Bratislava I, No. 12C 231/201016, May 2014; decision of the Regional Court in Bratislava, No. 14 Co 552/2014 – 180, 26 September 2017 .

¹³⁵ For example, in an *actio popularis* submitted to the District Court Bratislava III, No 11 C 351/2015, 29 April 2015, the Centre for Civil and Human Rights claims segregation of Roma children in education that is taking place through educating these children in an ethnically homogeneous school and through financing and constructing a so-called ‘container school’ (‘container schools’ have a strong element of racial segregation – see section 3.2.8 for more details). On 6 October 2016, the district court dismissed the lawsuit, but data about ethnic composition on the given school has not been questioned. The case is currently pending before the Regional Court in Bratislava.

discrimination Act is narrower than that contained in the directives, as it must take place 'on [the prohibited] grounds', as compared to the directives where it is sufficient for it to be 'related to' any of the grounds.

In Slovakia, harassment does explicitly constitute a form of discrimination. Section 2a(1) of the Anti-discrimination Act explicitly mentions harassment as a form of discrimination.

b) Scope of liability for harassment

In Slovakia, where harassment is perpetrated by an employee, the employer is liable and the employee would also probably be liable (although judicial interpretation is required on the responsibility of the latter).

The Anti-discrimination Act does not provide a direct answer as to who is to be held liable for unlawful actions breaching the principle of equal treatment; it only uses the term 'the person violating the principle of equal treatment'.¹³⁶ Section 11(1) of the act further states that 'the claimant is obliged to identify the person who has allegedly violated the principle of equal treatment'.

The liability rules (although not explicit) are universal with regard to all forms of discrimination contained in the Anti-discrimination Act and to the duty to carry out measures to prevent discrimination (Section 2(3) of the Anti-discrimination Act). The basic interpretative frameworks to answer the above question are provided by two specific provisions of the Anti-discrimination Act.

First, according to Section 3(1) of the act, the duty to comply with the principle of equal treatment in all the areas covered by the act lies with 'everyone'. Given the fact that the provision uses the term 'everyone' and does not mention that a particular breach of the principle of equal treatment can only lead to the liability of one person, it is arguable that liability for breaches of the principle of equal treatment is not vested in sole and mutually exclusive liability holders but can lie in parallel with individuals who breach the principle of equal treatment with their direct personal actions/omissions (such as (co-)employees) and at the same time with persons with overall responsibility (such as employers). However, what is problematic in the context of this interpretation is the fact that the principle of equal treatment only applies in connection with rights of persons as stipulated by special laws (Section 3(2) of the Anti-discrimination Act) and it is therefore hard to establish the rights to which, for example, an employee of a service provider is entitled as opposed to a customer of the service provider, or as opposed to a co-employee.

Secondly, the concept of the principle of equal treatment encompassing the duty to adopt measures to prevent discrimination (Section 2(3) of the Anti-discrimination Act) also has interpretative significance in terms of liability. Provided some kind of causation is established between the actions/omissions of individuals in certain environments relevant from the point of view of the Anti-discrimination Act (such as workplaces), and negligence on the part of persons with decision-making/statutory powers in these environments is identified, the liability should also lie with these entities (e.g. employers).

Also relevant is the content of Section 5(2) of the Anti-discrimination Act, which stipulates that the principle of equal treatment must be applied in the fields of 'access and provision of' social security, healthcare, education and goods and services including housing. Thus, it follows from the quoted provision that both persons who access as well as persons who provide the specified items are entitled to protection against violations of the principle of equal treatment, and those who interact with them in these environments should be held liable for the breaches (as 'everyone' is obliged to observe the principle of equal treatment). However, the wording of Section 6(1) of the Anti-discrimination Act, which states that discrimination shall be prohibited in 'employment relationships, similar legal

¹³⁶ Slovakia, Anti-discrimination Act, 365/2004, Section 9(2).

relationships, and in related legal relationships' is confusing in the framework of that interpretation. As labour legislation does not define any of the terms 'employment relationship, similar legal relationship, and related legal relationships' and legal theory defines legal relationships basically as relationships between employers and employees,¹³⁷ it is hard to state unambiguously whether there is individual liability for discrimination between co-workers – especially given that the Labour Code does not specify the duty to observe the principle of equal treatment/prohibition of discrimination among the explicit responsibilities of the employee.¹³⁸ The situation in respect of executive employees is different because it is easier to argue that they are also personally liable for discrimination (in any form). Although the duty to act in accordance with the principle of equal treatment is not made explicit by legislation in the case of executive employees either, the Labour Code contains various specific duties of executive employees from which the duty to observe the principle of equal treatment can be undoubtedly inferred (at least to some extent).¹³⁹

There are also some additional statutory provisions that apply to liability for discrimination/other breaches of the principle of equal treatment. According to the general provisions of the Civil Code regarding liability for damages,¹⁴⁰ the damage is caused by a legal entity or a natural person provided it was caused during the performance of their business and by the people engaged to perform the business. It is of no importance whether the person engaged performs an activity in the context of an employment relationship, self-employment or on the basis of another type of legal relationship. According to the Civil Code, individuals acting on behalf of a legal entity or a natural person are not liable for damages without prejudice to their liability for damage as stipulated by labour regulations. Moreover, Section 192 of the Labour Code makes the employer responsible in relation to the employee for damage occurring to the employee due to a breach of legal regulations or due to intentional behaviour in breach of good morals during the performance of work or in direct connection with such behaviour. The employer is liable to the employee for damages occurring due to a breach of legal obligations by the personnel performing the tasks of the employer on behalf of the employer.

A harassment case decided by domestic courts concerned a Roma woman who claimed to be discriminated against in her workplace on the ground of her Roma ethnic origin in March 2009 when - unlike non-Roma employees in comparable working positions - she was transferred to an inconvenient office room placed in the basement, which caused her health problems. Later in 2010, her workplace was transferred to the segregated Roma ghetto where she was again placed in an inconvenient office room negatively impacting her health. She also claimed that the employer did not give her any bonus to her salary and was harassing her, and she pointed out that direct discrimination and harassment against her also resulted from victimisation after she repeatedly complained to the employer about how she was treated. The District Court Košice II dismissed the lawsuit by its judgment no. 20C68/2012-350 of 8 September 2015, reasoning that no discrimination occurred. As for harassment, the first instance court concluded that the conduct of the employer did not

¹³⁷ See for example Barancová, H., Schronk, R. (2007), *Pracovné právo* (Labour Law), Bratislava, Sprint, pp. 197-208.

¹³⁸ See Slovakia, Labour Code, 311/2001, Sections 81 and 82 respectively.

¹³⁹ See Slovakia, Labour Code, 311/2001, Section 82, which lists the fundamental obligations of executive employees and reads as follows: 'An executive employee, apart from the obligations stipulated in Section 81 [general obligations of an employee], shall also be obliged in particular:
to manage and check the work of employees;
to create favourable working conditions and ensure safety and health protection at work;
to secure remuneration of employees in accordance with generally binding legal regulations, collective agreements and employment contracts, and to comply with the principle of equal pay for equal work or work of equal value (...);
to create favourable conditions for improving the professional standard of employees and for satisfying their social needs;
to ensure that breaches of labour discipline shall not transpire;
to ensure the adoption of timely and effective measures for protection of the employers' property.'

¹⁴⁰ Slovakia, Civil Code (as amended), 40/1964, Section 420(2).

result or could not result in an intimidating, unfriendly, shameful, humiliating, insulting, degrading or offensive environment, the purpose or effect of which is or can be violation of freedom or human dignity of the claimant. According to the court, under the definition of the harassment there is a need to identify a person in a comparable situation to the claimant (a comparator), as the subjective perception of a specific person is not sufficient to assess harassment. The claimant in her appeal asked the appeal court to refer the case to the CJEU for a preliminary ruling. The claimant found the identification of a comparator when assessing discrimination in the form of harassment clearly impossible and legally groundless. The Regional Court in Košice, sitting as the appeal court, by its decision, no 2Co/657/2015 - 379 of 13 December 2016 rejected the request for a referral to the CJEU reasoning that it is not necessary to resolve the issue of the requirement to identify a comparator when assessing harassment, because the evidence provided in this case by the respondent sufficiently disproved the alleged harassment and reaffirmed the first instance court decision.¹⁴¹ This judicial practice of finding a need to identify a comparator in a case of harassment is contrary to the directives.

2.5 Instructions to discriminate (Article 2(4))

a) Prohibition of instructions to discriminate

In Slovakia, instructions to discriminate are prohibited in national law. Instructions are defined. A definition is given in Section 2a(6) of the Anti-discrimination Act and means conduct consisting of abuse of the subordinate position of a person for the purpose of discriminating against a third person.

In Slovakia, instructions do explicitly constitute a form of discrimination (Section 2a(1) of the Anti-discrimination Act).

The Anti-discrimination Act also defines incitement to discriminate as 'persuading, affirming or inciting a person to discriminate against a third person'.¹⁴² Under Section 2a(1) of the Anti-discrimination Act, incitement to discriminate is considered a form of discrimination.

The full material scope of both directives of the protection against instruction to discriminate is covered by domestic anti-discrimination legislation.

There is no case law dealing with instructions or incitement to discriminate.

b) Scope of liability for instructions to discriminate

In Slovakia, the instructor and the discriminator are liable.

Since instruction to discriminate is considered a form of discrimination, the general rules for liability for discrimination (see section 3.1.2 of this report) apply also to liability for discrimination by employers or service providers in cases of instructions to discriminate given by their employees. The general liability rules described in detail in section 3.1.2 below also apply to the individuals who give instructions to discriminate.

With regard to the individual liability of those who discriminate because they have received such an instruction, Section 81(a) of the Labour Code stipulates that an employee is obliged, inter alia, to follow the instructions of their superiors that have been given in accordance with legal regulations. It therefore follows that following instructions of superiors is only legal when these instructions do not violate the law (which is not the case when following an instruction to discriminate). Hence the rules of individual liability for

¹⁴¹ Decision of the District Court Košice II, No 20C68/2012-350 of 8 September 2015 and decision of the Regional Court in Košice, No 2Co/657/2015 - 379 of 13 December 2016.

¹⁴² See Slovakia, Anti-discrimination Act, 365/2004, Section 2(7).

following an instruction to discriminate are the same as the general rules for individual liability for any form of discrimination (see section 3.1.2 below).

The Civil Service Act¹⁴³ stipulates that a civil servant has the right to refuse to carry out a civil task (a task to be carried out pursuant to this act) that is in conflict with generally legally binding legal regulations¹⁴⁴ (which also includes anti-discrimination legislation). A civil servant is also obliged to respect inter alia the Constitution and laws (which includes the duty to observe the principle of equal treatment) and apply them to the best of their knowledge and belief, and to respect and protect human dignity and human rights.¹⁴⁵ Civil servants are also obliged to follow the instructions of their superiors unless these instructions are in conflict with generally binding legal regulations¹⁴⁶ (which includes all anti-discrimination legislation). If a civil servant believes that an instruction given by their superior is in conflict with generally binding legal regulations, she or he is obliged to notify the superior in question of that fact before starting to follow the instruction. If the superior nevertheless insists on the civil servant following the instruction, she or he is obliged to notify them of that fact in writing.¹⁴⁷

According to the knowledge of the author of this report, the only case in which an instruction to discriminate was partially involved is that of a Roma man, I.H., who sued a mobile operator (the case is described in section 2.2.1 of this report). The domestic courts dismissed the claim, reasoning that the defendants are not responsible for discriminatory treatment. As for a possible instruction to discriminate on the basis of an agency contract (*zmluva o obchodnom zastúpení*) the Supreme Court concluded that a violation of the principle of equal treatment has a personal character and that the employee of the company which provides services under a contract with the mobile operator has an obligation to refuse to act in accordance with potentially discriminatory instructions given by the mobile operator, which is why the mobile operator cannot be found responsible for discrimination.¹⁴⁸

2.6 Reasonable accommodation duties (Article 2(2)(b)(ii) and Article 5 Directive 2000/78)

- a) Implementation of the duty to provide reasonable accommodation for people with disabilities in the area of employment

In Slovakia, the duty to provide reasonable accommodation for people with disabilities is included in the law and is defined.

Under Section 7 of the Anti-discrimination Act, an employer is obliged to take measures to enable a person with a disability to have access to employment, to exercise certain activities at work, to promotion or other advancement in employment or to training. This does not apply if the adoption of such measures would impose a disproportionate burden on the employer.¹⁴⁹ To determine whether the measures give rise to a disproportionate burden, account must be taken of:

- the benefit that the adoption of the measure would mean for the person with a disability;
- the financial resources of the employer, including the possibility of obtaining funding or any other assistance for the adoption of the measure; and

¹⁴³ Slovakia, Act No 55/2017 on Civil Service and on Changing and Supplementing Some Other Laws, (*zákon č. 55/2017 Z. z. o štátnej službe a o zmene a doplnení niektorých zákonov*).

¹⁴⁴ Slovakia, Civil Service Act, 55/2017, Section 111(3).

¹⁴⁵ Slovakia, Civil Service Act, 55/2017, Section 111(1)(a).

¹⁴⁶ Slovakia, Civil Service Act, 55/2017, Section 111(1)(i).

¹⁴⁷ Slovakia, Civil Service Act, 55/2017, Section 111(3).

¹⁴⁸ Decision of the Slovak Supreme Court, No 3 Cdo 405/2015 – 773 of 8 December 2016.

¹⁴⁹ Slovakia, Anti-discrimination Act, 365/2004, Section 7(1).

- the possibility of attaining the purpose of the measure referred to in paragraph 1 in a different, alternative manner.¹⁵⁰

The measure will not be considered as giving rise to a disproportionate burden if its adoption by the employer is mandatory under separate provisions.¹⁵¹

Employers' duties in this regard are also prescribed by the Labour Code: third sentence of Article 8 of the basic principles and Section 158 of the Labour Code state that

'employers shall be obliged to employ persons with disabilities in suitable positions, to enable them to receive training or to study with a view to acquiring necessary skills and shall also be obliged to support the upgrading of these skills. Furthermore, employers shall be obliged to create conditions for employees to have the possibility of applying themselves in work, and shall improve workplace facilities in order to enable these employees to obtain, wherever possible, the same work results as other employees, and to facilitate their work as best as they can' (Section 158(1)).

As regards employees with disabilities who cannot be employed under usual working conditions, employers 'may set up for them sheltered workshops or sheltered workplaces' (Section 158(2)). Moreover, 'employers shall enable their employees with disabilities to receive theoretical or practical training (retraining) aimed at maintaining, upgrading, expanding or changing their qualifications, or adapting to technological progress with a view to safeguarding their employment'. Employers must cooperate with trade unions or employee representatives in these activities.

However, the enforceability of the above-quoted provisions is very questionable. For example, according to Section 158(3) of the Labour Code, the duties of an employer stipulated by paragraphs 1 and 2 of Section 158 should be regulated in more detail by special regulations. However, no such regulations exist – unless section 7 of the Anti-discrimination Act is perceived as this type of regulation (which should serve as the interpretative framework for Section 158 of the Labour Code in any case).

b) Practice and case law

There is no case law yet on the duty to provide reasonable accommodation in employment. In one case that has been litigated, the claimant was working as a nursing assistant and asked her employer to shift her to another working position, as due to her disability she could no longer fulfil the tasks required by the job. The first instance court in its decision¹⁵² did not provide any interpretation of the duty to provide reasonable accommodation, as it dismissed the claim stating that the statute of limitation had expired. The claimant in the case is being legally represented by the Slovak National Centre for Human Rights (the equality body). On 27 October 2017, the Regional Court in Bratislava decided on the claimant's appeal and quashed the decision of the court of first instance.¹⁵³ The case is now pending again before the court of first instance, which will decide on its merits.¹⁵⁴

However, in 2015, the Supreme Court decided a case on the right to inclusive education of a child with a disability and held that a refusal to provide reasonable accommodation is a form of discrimination.¹⁵⁵ Although the case primarily applies to reasonable accommodation in education, it will probably have wider applicability in relation to reasonable accommodation in employment (and in other fields) given that the Supreme

¹⁵⁰ Slovakia, Anti-discrimination Act, 365/2004, Section 7(2)(a)-(c).

¹⁵¹ Slovakia, Anti-discrimination Act, 365/2004, Section 7(3).

¹⁵² Decision of the District Court Bratislava II, No. 19 C/445/2015 – 86, 1 March 2016.

¹⁵³ Decision of the Regional Court in Bratislava, No 8Co/248/2016-123, 27 October 2017 which quashed the decision of the District Court Bratislava II, No. 19 C 446/2015 – 86, 1 March 2016.

¹⁵⁴ See information provided by the Slovak National Centre for Human Rights to the author of this report on 7 February 2019.

¹⁵⁵ Decision of the Supreme Court of the Slovak Republic, No. 7Sžo/83/201424, September 2015.

Court applied the CRPD and reiterated the constitutional principle that the CRPD is a part of the national legal order, has priority over national legislation, and is even directly applicable.

c) Definition of disability and non-discrimination protection

There is no definition of disability contained in the Anti-discrimination Act, neither in general nor for the purposes of the duty to provide reasonable accommodation.

A definition of an employee with disability is included in the Labour Code. According to this definition, an employee with a disability is an employee recognised as disabled according to a social security legislation and who provides a decision on their entitlement to disability pension to their employer (Labour Code, Section 40(8)). However, its only purpose is to identify a duty to provide reasonable accommodation and not to claim protection from discrimination in general (Labour Code, Section 158).

The Schools Act defines a 'child with a disability or a pupil with a disability' as a child or a pupil with a

'mental¹⁵⁶ disability, hearing impairment, visual impairment, physical impairment, communication ability disorder, autism, or with other pervasive developmental disorders, or with multiple disabilities.'¹⁵⁷

The Schools Act also uses the term 'health disadvantage'. A child or a pupil with a 'health disadvantage' is defined as a child or a pupil with a 'disability' or who is 'ill or their health is impaired' or who has 'developmental disorders', or a 'behavioural disorder'.¹⁵⁸ The same definition of disability is used also for the purpose to identify a duty to provide reasonable accommodation.

Please see section 2.1.1 for further details.

d) Failure to meet the duty of reasonable accommodation for people with disabilities

In Slovakia, failure to meet the duty of reasonable accommodation does count as discrimination (or, more accurately, as a violation of the principle of equal treatment).

A breach of the employer's duty to provide reasonable accommodation for a person with a disability as well as a refusal or failure to take certain measures is considered to be a breach of the principle of equal treatment.¹⁵⁹

It is regarded as a violation of this principle (which is broader than the prohibition of discrimination in its individual forms and encompasses also the duty to adopt measures to prevent discrimination) and it does not equate to direct or indirect discrimination. However, this does not mean that, in specific situations, the actions or omission of an employer cannot at the same time also fall under definitions of the specific forms of discrimination as defined by the Slovak Anti-discrimination Act – mainly direct discrimination, indirect discrimination or harassment.

In 2015, the Supreme Court held (referring to the CRPD and applying it, but not referring to the Anti-Discrimination Act) that the failure to provide reasonable accommodation is a form of discrimination (see section 2.6(d) above).

¹⁵⁶ In Slovak, the act uses the word 'mental' (and not, for example, 'intellectual').

¹⁵⁷ Slovakia, Schools Act, 245/2008, Section 2(l).

¹⁵⁸ Slovakia, Schools Act, 245/2008, Section 2(k).

¹⁵⁹ Slovakia, Anti-discrimination Act, 365/2004, Section 7(4).

Given that the duty to provide reasonable accommodation is a part of the duty to observe the principle of equal treatment, it is judicially enforceable in accordance with Sections 9 to 11 of the Anti-discrimination Act, and all procedural rules contained in these sections apply, including the shift in burden of proof. In principle, this applies not only to the duty to provide reasonable accommodation in employment entrenched in the Anti-discrimination Act (see section 2.6(a) above), but also to fields falling outside the scope of employment given that the duty to adopt measures to prevent discrimination applies across all fields and grounds falling under the scope of the Anti-discrimination Act, and given that the Supreme Court has already held – referring to the CRPD and applying it – that the failure to provide reasonable accommodation is a form of discrimination.

In the field of employment, the observance of all the duties stipulated by the Anti-discrimination Act (and hence also of the duty to provide reasonable accommodation under Section 7) and also the observance of the specific duties on the protection of employees with disabilities contained in the Labour Code (see section 2.6(a) above) are also subject to supervision by the national labour inspectorate, and hence also to the fines imposed by it. On finding breaches of the Labour Code provisions on the conditions of work of persons with disabilities, the labour inspectorate is obliged to impose a fine of EUR 1 000 to 200 000 (see section 6.5(a) of this report for more details on labour inspection and on the fines). If reasonable accommodation is refused, an individual can claim a violation of the principle of equal treatment under the Anti-discrimination Act in court proceedings.

- e) Duties to provide reasonable accommodation in areas other than employment for people with disabilities

In Slovakia, there is a duty to provide reasonable accommodation for people with disabilities outside the area of employment.

It should be noted that the Anti-discrimination Act, which generally applies to the fields of employment and occupation, social security, healthcare, provision of goods and services including housing and education (also in relation to disability) stipulates a legally enforceable duty to adopt measures to prevent discrimination in all the fields covered (Section 2(3) of the Anti-discrimination Act). Thus, the duty to provide reasonable accommodation for people with disabilities outside employment can be regarded to be implicitly contained in this generally framed legal duty to prevent discrimination. It is, however, not accompanied by any kind of justification test (the provision on reasonable accommodation contained in Section 7 of the Anti-discrimination Act and quoted above in sections 2.6(a) and 2.6(b) only applies to the field of employment).

There are also some specific duties contained in other pieces of legislation. For example, the Schools Act contains special provisions designed to accommodate the needs of children and pupils with disabilities in kindergartens, primary and secondary schools and in school facilities.¹⁶⁰ A special provision is also included in the Act on Higher Education, guaranteeing reasonable accommodation for students with specific needs, including financial support in certain circumstances.¹⁶¹

In 2015, the Supreme Court decided a case on the right to inclusive education of a child with a disability and held that a refusal to provide reasonable accommodation is a form of discrimination.¹⁶²

The Supreme Court held, referring to Article 2 of the CRPD, that a refusal to provide reasonable accommodation is a form of discrimination on the ground of disability and that this type of discrimination is prohibited. The court also emphasised that the best interest

¹⁶⁰ Slovakia, Act No 245/2008 on Education (Schools Act), as amended (*zákon č. 245/2008 Z. z. o výchove a vzdelávaní (Školský zákon) a o zmene a doplnení niektorých zákonov*).

¹⁶¹ Slovakia, Act on Higher Education, 131/2002, Sections 16a, 57, 96 and 100.

¹⁶² Decision of the Supreme Court of the Slovak Republic, No. 7Sžo/83/2014, 24 September 2015.

of a child must represent the primary perspective, and that in this case inclusive education of the complainant, accompanied by the reasonable accommodation that she needed, was in her best interest. The court referred to an expert opinion that recommended considering the education of the complainant in a mainstream school, with a simultaneous provision of an individual educational plan and a teacher assistant for her. The court, referring to another expert opinion, also emphasised that inclusive education of children with disabilities is beneficial for all children (that is for children both with and without a disability).

Although the Supreme Court did not mention the Anti-discrimination Act in its decision at all and although the case primarily applies to reasonable accommodation in education, it will probably have wider applicability in relation to reasonable accommodation in other fields – given that the Supreme Court applied the CRPD and reiterated the constitutional principle that the CRPD is a part of the national legal order, has priority over national legislation, and is even directly applicable.

f) Duties to provide reasonable accommodation in respect of other grounds

In Slovakia, there is a legal duty to provide reasonable accommodation in respect of other grounds in the public and the private sector.

The Anti-discrimination Act sets out in its basic provisions the general characteristics of the principle of equal treatment. According to this provision (Section 2(3) of the Anti-discrimination Act) compliance with this principle will also (apart from prohibition of discrimination on the specified grounds) involve the adoption of measures to prevent discrimination. From this principle it can be inferred that the duty to provide reasonable accommodation applies not only to employers and people with disabilities in the area of employment (for which a specific reasonable accommodation duty exists in the Anti-Discrimination Act),¹⁶³ but to all other areas and grounds that are regulated by the existing laws prohibiting discrimination. Therefore, the duty to provide reasonable accommodation applies in the fields of employment, social security (including social advantages), healthcare, and provision of goods and services (including housing and education). It applies to the grounds of sex, religion or belief, race, affiliation with nationality (*národnosť*) or an ethnic group, disability, age, sexual orientation, marital status and family status, colour of skin, language, political or other opinion, national or social origin, property, lineage/gender or other status, or the reason of reporting criminality or other anti-social activity (grounds protected under the Anti-discrimination Act), and in principle also to additional grounds contained in other legislation where the duty to observe the principle of equal treatment is entrenched. However, this general duty to provide reasonable accommodation following from the duty to prevent discrimination is definitely not of the same quality for all grounds, since for grounds other than disability, neither legislation nor case law provides any detail on how the duty is supposed to be fulfilled or whether justification is possible. To the best knowledge of the author of this report no public or academic discussion has been conducted in Slovakia on those issues.

No guidelines have been issued by the equality body or by any other body on how the duty to prevent discrimination should be carried out.

¹⁶³ Slovakia, Anti-discrimination Act, 365/2004, Section 7(4).

3 PERSONAL AND MATERIAL SCOPE

3.1 Personal scope

3.1.1 EU and non-EU nationals (Recital 13 and Article 3(2), Directive 2000/43 and Recital 12 and Article 3(2), Directive 2000/78)

In Slovakia, there are no residence or citizenship/nationality requirements for protection under the relevant national laws transposing the directives. In other words, protection against discrimination in the national legal system is not conditional on a person's citizenship or nationality and the Anti-discrimination Act has no specific requirements in this regard.

However, Section 4(1)(a) of the Anti-discrimination Act explicitly stipulates that the provisions of the act will not apply to differences of treatment resulting from the requirements for entry and residence for foreigners in Slovakia, including the treatment of these foreigners provided for under separate provisions,¹⁶⁴ except for citizens of EU Member States, a state which is party to the European Economic Area Agreement, Swiss citizens and stateless persons and their family members.

According to the Act on the Residence of Foreigners, a foreigner is anybody who is not a citizen of the Slovak Republic.¹⁶⁵

In addition, separate acts set out the requirement to be a citizen of the Slovak Republic for specific professions or employment.¹⁶⁶

Article 35 of the Constitution guarantees the right to choose a profession and appropriate training freely, the right to conduct entrepreneurial or other gainful activity, as well as the right to work and to material welfare for those who, through no fault of their own, are unable to enjoy the right to work. Article 35(4) states that the law may provide a different regulation of these rights for foreigners.¹⁶⁷

3.1.2 Natural and legal persons (Recital 16, Directive 2000/43)

a) Protection against discrimination

In Slovakia, the personal scope of anti-discrimination law covers natural and legal persons for the purpose of protection against discrimination.

The Anti-discrimination Act contains a specific definition of what constitutes discrimination against legal persons. According to Section 2a(9), discrimination against a legal person is

'a failure to comply with the principle of equal treatment in relation to this person on the grounds of discrimination listed in Section 2(1) of the Anti-discrimination Act¹⁶⁸ with respect to its members, associates, shareholders, members of its bodies, employees, persons acting on its behalf or persons on behalf of which such a legal entity is acting.'

¹⁶⁴ E.g. Slovakia, Act No. 404/2011 on the Residence of Foreigners and on amending and supplementing certain laws, as amended (*zákon č. 404/2011 Z. z. o pobyte cudzincov a o zmene a doplnení niektorých zákonov v znení neskorších predpisov*), Slovakia, Act No. 480/2002 on Asylum and on amending and supplementing certain laws, as amended (*zákon č. 480/2002 Z. z. o azyle a o zmene a doplnení niektorých zákonov v znení neskorších predpisov*).

¹⁶⁵ Slovakia, Act on the Residence of Foreigners, 404/2011, Section 2(2).

¹⁶⁶ Senior state officials, prosecutors, constitutional judges, judges, police officers, customs officers, fire and rescue service members, mountain rescue service members and professional soldiers.

¹⁶⁷ For example: Slovakia, Act on the Residence of Foreigners, 404/2011 and Slovakia, Asylum Act 480/2002.

¹⁶⁸ Sex, religion or belief, race, affiliation with nationality or an ethnic group, disability, age, sexual orientation, marital status and family status, colour of skin, language, political or other opinion, national or social origin, property, lineage/gender or other status, or the reason of reporting criminality or other anti-social activity.

Therefore, with regard to protection, the Anti-discrimination Act does not distinguish between natural and legal persons. The national provisions comply with the directives.

b) Liability for discrimination

In Slovakia, the personal scope of anti-discrimination law covers natural and legal persons for the purpose of liability for discrimination.

Section 3(1) of the Slovak Anti-discrimination Act introduced a general provision according to which the principle of equal treatment is binding on 'everyone'. This means that in terms of liability for discrimination, the Anti-discrimination Act does not distinguish between natural and legal persons. The only explicit exception is housing where the duty to apply the principle of equal treatment does not apply to natural persons who are not entrepreneurs.¹⁶⁹ There is no case law on the issue.

3.1.3 Private and public sector including public bodies (Article 3(1))

a) Protection against discrimination

In Slovakia, the personal scope of national law covers private and public sector including public bodies for the purpose of protection against discrimination.

With regard to the protection of legal persons, the Anti-discrimination Act does not distinguish between the private and the public sector, protecting in principle all bodies in both sectors.

The national provisions comply with the directives, although there is no case law on the issue, and the issue of protection of public bodies has not yet been subject to public discussion in Slovakia.

b) Liability for discrimination

In Slovakia, the personal scope of anti-discrimination law covers private and public sector including public bodies for the purpose of liability for discrimination.

The Anti-discrimination Act does not distinguish between public and private bodies in terms of liability. This can be inferred from the general rule contained in Section 3(1) of the Anti-discrimination Act, which stipulates that the principle of equal treatment is binding on 'everyone', and also from Sections 5 and 6 of the Anti-discrimination Act, which provide details on the material scope of the act (fields covered) without specifying what kind of bodies they cover (e.g. whether public or private). The only explicit exception where the liability does not apply to a part of the 'private sector' is housing, where the duty to apply the principle of equal treatment does not apply to natural persons who are not entrepreneurs.¹⁷⁰

However, it is questionable whether some statutory duties that are carried out by public bodies and are generally perceived as services to the public (such as the provision of information on request by public bodies, or aid provided by the state in case of emergencies) can be perceived as 'services' in the sense of the directives.

¹⁶⁹ Slovakia, Anti-discrimination Act, 365/2004, Section 5(2)(d).

¹⁷⁰ See Slovakia, Anti-discrimination Act, 365/2004, Section 5(2)(d).

3.2 Material scope

3.2.1 Employment, self-employment and occupation

In Slovakia, national legislation applies to all sectors of private and public employment, self-employment and occupation, military service, holding statutory office, for the five grounds. If contract work falls outside legal relations covered by the Labour Code, it is probably not covered by the anti-discrimination provisions.

Section 6(1) of the Anti-discrimination Act stipulates that the principle of equal treatment must be applied in employment relationships, similar legal relationships and related legal relationships.¹⁷¹ Section 6(2)(a) states further that the principle of equal treatment will be applied only in connection with rights of persons provided for under special laws regulating mainly the field of employment, occupation and other gainful activities or functions, and contains a footnote referring (through a non-exhaustive list) to the Labour Code (which regulates the whole sphere of private employment and a part of public employment) and to the Act on Public Service (which regulates the sphere of public service). Accordingly, employment for the purpose of the Anti-discrimination Act means a complex set of legal relations resulting from labour, service, contractual and other relations relating to gainful activities.

Section 3(1) of the Anti-discrimination Act states that the obligation to observe the principle of equal treatment applies to 'everybody' in the field of (inter alia) employment relationships and related legal relationships. Thus, it covers the entire sphere of employment, self-employment and occupational relationships in the private and public spheres, including customs officers, soldiers performing military service, police officers, members of the Slovak intelligence service, the prison and court guard, railway police officers and members of the fire and rescue service performing civil service.¹⁷²

Article 1 of the general principles of the Labour Code stipulates the right of natural persons to free choice of their employment, to fair and satisfying working conditions, and to protection against arbitrary dismissal in accordance with the principle of equal treatment enshrined in the Anti-discrimination Act. Section 13 of the Labour Code stipulates the duty of an employer to treat employees in accordance with the principle of equal treatment constituted by the Anti-discrimination Act. The duty to observe the principle of equal treatment (with reference to the Anti-discrimination Act) in relation to civil servants is enshrined in Article 6 of the general principles of the Civil Service Act.

Act 455/1991 on Licensed Trades (the Small Business Act), states in Section 5a that the rights provided for in the act are guaranteed equally to all persons in conformity with the principle of equal treatment in labour relations and similar legal relations provided for under separate provisions of the Anti-discrimination Act. However, this act only regulates the conditions for licensed trades for self-employed persons in relation to the state – i.e. for setting up and running their business. It does not regulate the relations between the freelancers and their purchasers, which are regulated either by the Civil Code¹⁷³ or the Commercial Code.¹⁷⁴ However, neither the Civil Code nor the Commercial Code contain an anti-discrimination clause with regard to entering into contracts, and, interpreted also in

¹⁷¹ Neither the Anti-discrimination Act nor case law stipulates the meaning of 'similar legal relationships and related legal relationships'. However, given the content of Section 6(2) and references to other pieces of legislation contained therein (by means of footnotes), it is arguable that 'similar legal relationships and related legal relationships' comprise a broad range of relationships in the field of paid work (such as the public service, employment services – such as vocational training or counselling provided to jobseekers, or legal relationships connected to membership and functioning in employees' or employers' organisations, or in professional organisations (such as legal or medical professionals' bars).

¹⁷² The most relevant acts are Slovakia, Labour Code, 311/2001, Slovakia, Civil Service Act, 55/2017, and some special laws on performing public service in special fields (the judiciary, military service, Police Corps, Slovak Information Service, etc).

¹⁷³ Slovakia, Civil Code, 40/1964.

¹⁷⁴ Slovakia, Commercial Code, 513/1991.

the light of Section 6(2) of the Anti-discrimination Act (the applicability of the Anti-discrimination Act only in connection with the rights of persons provided for under special laws – see above), it is debatable what rights self-employed persons (or businesses in general) have as against those of potential purchasers, especially in the period prior to the start of a contract relationship or after it has ceased. It is true that Section 5(2) of the Anti-discrimination Act stipulates the duty to observe the principle of equal treatment in access to and providing social security services and insurance and social advantages, healthcare, education and services, including housing (which is moreover again only in connection with the rights of persons provided for under special laws), but the wording of the provision applies most likely to 'contracting parties', meant in the sense of service receivers, entitled to proper and non-discriminatory services by their providers.

There is no case law that would deal with the issues discussed above.

3.2.2 Conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy (Article 3(1)(a))

In Slovakia, national legislation prohibits discrimination in the following areas: conditions for access to employment, self-employment or occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy for the five grounds in both private and public sectors as described in the directives.

Under Sections 6(1) and 6(2)(a)(b) of the Anti-discrimination Act, the principle of equal treatment is applicable (on all the grounds prohibited by the Anti-discrimination Act – see section 2.1 of this report) to the rights of persons under the provisions of acts regulating access to employment, occupation, other gainful activities or functions, including job specifications, selection criteria, recruitment conditions and promotion. In other words, the Anti-discrimination Act refers to the existing laws in the area of employment, self-employment and occupation without making any distinction between legal relationships in the private and the public sector. At the same time, all laws regulating the public and the private sector employment refer to the Anti-discrimination Act and/or are based on it and/or supplement it. The applicable provisions (apart from the ones contained in the Anti-discrimination Act) are, for example, Article 6 (on the basic principles) and Section 41 of the Labour Code, Article 9 (on the basic principles) of the Civil Service Act, and Section 5a of the Small Business Act.¹⁷⁵

There is no case law specifically concerning the applicability of provisions relating to access to employment, self-employment or occupation.

3.2.3 Employment and working conditions, including pay and dismissals (Article 3(1)(c))

In Slovakia, national legislation prohibits discrimination in working conditions including pay and dismissals, for all five grounds and for both private and public employment.

Section 6(2)(b) of the Anti-discrimination Act expressly covers, for the whole area of employment relationships, similar relationships and related legal relationships, and on all the grounds contained in the Anti-discrimination Act (see section 2.1 above), 'the performance of employment¹⁷⁶ and working conditions, including remuneration, promotion and dismissal', in which the principle of equal treatment applies (Section 6(1) of the Anti-discrimination Act).

¹⁷⁵ Slovakia, Small Business Act, 455/1991.

¹⁷⁶ The term 'employment' includes occupation, other gainful activity or function.

According to the third sentence of Article 8 of the basic principles of the Labour Code, and Section 158 of the Labour Code, the employer must create such working conditions for employees with disabilities as to enable them to apply and upgrade their work skills, taking account of their state of health.

As far as equal pay is concerned, Section 119a(1), first sentence of the Labour Code provides that 'wage conditions must be agreed without any form of sex discrimination'. This applies to 'all remuneration for work and benefits that are paid or will be paid in relation to employment according to the other provisions of this act or special regulations'.¹⁷⁷ According to Section 119a(2), 'women and men have the right to equal pay for equal work or for work of equal value'. These provisions also apply to employees of the same sex if they carry out equal work or work of equal value.¹⁷⁸ Therefore it can be argued that these provisions apply equally to all other prohibited grounds of discrimination.

3.2.4 Access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience (Article 3(1)(b))

In Slovakia, national legislation prohibits discrimination in vocational training outside the employment relationship, such as adult lifelong learning courses or vocational training provided by technical schools or universities.

Section 6(2)(c) of the Anti-discrimination Act stipulates the duty to observe the principle of equal treatment on all the grounds prohibited within it (see section 2.1 above) and in connection with the rights for which provision is made in separate acts in the area of access to vocational training, further vocational training and participation in active labour market policy programmes, including access to guidance services regarding employment selection and change of employment.

By defining 'further education' in Section 2(3), the Act on Lifelong Learning¹⁷⁹ indirectly defines what is to be understood under the term 'vocational training'. Further education is defined as:

'education in educational institutions of further education, which follows school education or other education following school education. Further education facilitates the acquisition of a partial or full qualification or the opportunity to complete, renew, expand or deepen the qualifications acquired through school education or to satisfy interests and acquire the capacity to participate in the life of society. The successful completion of further education does not confer a higher education degree.'

The Act on Lifelong Learning does not contain any equality/anti-discrimination clause or any reference to the Anti-discrimination Act.

The Act on Higher Education, regulating university education, stipulates that the rights provided under the act will be guaranteed in accordance with the principle of equal treatment.¹⁸⁰

There is no case law that would be relevant with regard to the applicability of vocational training provisions.

¹⁷⁷ Slovakia, Labour Code, 311/2001, Section 119a(1), second sentence.

¹⁷⁸ Slovakia, Labour Code, 311/2001, Section 119a(4).

¹⁷⁹ Slovakia, Act No 568/2009 on Lifelong Learning and amending and supplementing certain laws, as amended (*zákon č. 568/2009 Z. z. o celoživotnom vzdelávaní a o zmene a doplnení niektorých zákonov v znení neskorších predpisov*).

¹⁸⁰ Slovakia, Higher Education Act, 131/2002, Section 55(2).

3.2.5 Membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations (Article 3(1)(d))

In Slovakia, national legislation prohibits discrimination in the following area: membership of, and involvement in workers or employers' organisations as formulated in the directives for all five grounds and for both private and public employment.

Sections 6(1) and 6(2)(d) of the Anti-discrimination Act prohibit discrimination on all the grounds covered by the Anti-discrimination Act (see section 2.1 above) in connection with rights provided for by separate acts in the spheres of membership of and activity in employees' organisations, employers' organisations and organisations bringing together people of certain occupations, including the benefits that these organisations provide to their members.

There is no case law regarding the issue.

3.2.6 Social protection, including social security and healthcare (Article 3(1)(e) Directive 2000/43)

In Slovakia, national legislation prohibits discrimination in the following area: social protection, including social security and healthcare as formulated in the Racial Equality Directive.

Sections 5(1) and 5(2)(a)(b) of the Anti-discrimination Act prohibit discrimination on all the grounds contained in the Anti-discrimination Act (see section 2.1 above) in conjunction with special laws existing in the area of access to and provision of social assistance (now redefined as social services in the relevant legislation),¹⁸¹ social insurance, old-age pension insurance, supplementary pension insurance, state social support, social advantages and healthcare.

In the field of 'state social support', the Act on Aid in Material Need¹⁸² regulates, among other things, the provision of financial aid to those who are deemed to be in material need.¹⁸³ Material need is defined as a situation where the income of members of a household does not reach the level of the so-called 'minimum living threshold' (a sum stipulated by a special law;¹⁸⁴ in 2018, the sum for one adult was EUR 205.07 per month). The allowance (financial aid in material need) is supposed to secure basic living conditions.¹⁸⁵

The act contains a provision (Section 10(3)) that reduces the payment of the material need allowance by a sum of EUR 61.60 per each adult person (living in a household which is in consideration for a payment of the allowance) who does not carry out some kind of 'work

¹⁸¹ Slovakia, Act No 448/2008 on Social Services and on amending and supplementing Act No 455/1991 on Licensed Trades (Small Business Act), as amended (*zákon č. 448/2008 Z. z. o sociálnych službách a o zmene a doplnení zákona č. 455/1991 Z. z. o živnostenskom podnikaní (živnostenský zákon) v znení neskorších predpisov*).

¹⁸² Slovakia, Act No 417/2013 on Aid in Material Need and on changing and supplementing other laws, as amended (*zákon č. 417/2013 Z. z. o pomoci v hmotnej núdzi a o zmene a doplnení niektorých zákonov v znení neskorších predpisov*).

¹⁸³ See Slovakia, Act on Aid in Material Need, 417/2013, Section 1(1).

¹⁸⁴ Slovakia, Act No 601/2003 on the Living Minimum and on changing and supplementing other laws, as amended (*zákon č. 601/2003 Z. z. o životnom minime a o zmene a doplnení niektorých zákonov v znení neskorších predpisov*).

¹⁸⁵ Slovakia, Act on Aid in Material Need, 417/2013, Section 10(1,2). Under the act, the basic sum of this allowance for an adult living alone is EUR 61.60 per month, for a couple without children it is EUR 107.10 per month, for an individual with one to four children it is EUR 117.20 per month, for a couple with one to four children it is EUR 160.40 per month and so on (with the principle being the more people who are assessed together, the lower the average payment per person).

in the public interest' (for example, works organised by municipalities to maintain public premises), some kind of voluntary work (pursuant to a special law on voluntarism)¹⁸⁶ or some kind of work that prevents or solves emergency situations, for 32 hours per month. This provision was presented by Government representatives as a way of motivating the Roma to work and 'deserve' the payments that they receive from the state, and to prevent people from getting something from the state 'for free'. There is also no doubt that Roma represent a significant group of people who are in material need in Slovakia, due to structural discrimination in all fields including education, employment and housing – therefore it is also very clear on whom the provision has impact.

The provision was very heavily criticised by civil society and NGOs¹⁸⁷ and in 2014 led also to the submission of a constitutional complaint by the Public Defender of Rights (the Slovak ombudswoman) alleging the infringement of, among other rights, the right to equality and the right not to be subject to forced labour. The Constitutional Court rejected the case, arguing, quite unpersuasively, that the Public Defender of Rights was not entitled to submit it.¹⁸⁸

The basic law on the state social security scheme is the Social Insurance Act.¹⁸⁹ An integral part of the state social security system is also formed by the old-age pension scheme. The Social Insurance Act states that policyholders have rights in the exercise of social insurance in compliance with the principle of equal treatment in social security established in the Anti-discrimination Act.

The same applies to police officers, professional soldiers and soldiers in preparatory service under the Act on Social Security for Police Officers and Soldiers.¹⁹⁰

The Social Services Act¹⁹¹ regulates legal relations in connection with the provision of social services.¹⁹² The Social Services Act contains a principle of equal treatment clause and refers to the Anti-discrimination Act, as does the Act on Benefits for Compensation of Serious Disability,¹⁹³ which regulates legal relationships connected with providing financial contributions aimed at compensating for the social consequences of 'serious disabilities'.

¹⁸⁶ Slovakia, Act No 406/2011 on Volunteerism and on changing and supplementing other laws (*zákon č. 406/2011 Z. z. o dobrovoľníctve a o zmene a doplnení niektorých zákonov v znení neskorších predpisov*).

¹⁸⁷ See, for example, Balážová, G., Gallová Kriglerová, E., Chudžíková, A., Lajčáková, J., Kadlečíková, J. (2017), *Riešenie nezamestnanosti Romov, Od mýtov k praxi a späť*, available at http://cvek.sk/wp-content/uploads/2017/04/Nezamestnanost-Romov_studia.pdf; Balážová, G., Gallová Kriglerová, E., Chudžíková, A., Lajčáková, J., Surová, S., Števelová, Z. (2013), *Menšinová politika na Slovensku v roku 2013 : Výročná správa* (Minority Policies in Slovakia in 2013 : Annual Report), Centrum pre výskum etnicity a kultúry, 2013, pp. 65-78, available at <http://cvek.sk/mensinova-politika-na-slovensku-v-roku-2013-vyrocnna-sprava/>.

¹⁸⁸ Decision of the Constitutional Court of the Slovak Republic, No. PL. ÚS 36/2015, 10 June 2015.

¹⁸⁹ Slovakia, Act No 461/2003 on Social Insurance as amended (*zákon č. 461/2003 Z. z. o sociálnom poistení v znení neskorších predpisov*).

¹⁹⁰ Slovakia, Act No 328/2002 on Social Security for Police Officers and Soldiers and on amending and supplementing certain acts as amended (*zákon č. 328/2002 Z. z. o sociálnom zabezpečení policajtov a vojakov a o zmene a doplnení niektorých zákonov v znení neskorších predpisov*).

¹⁹¹ Slovakia, Act No 448/2008 on Social Services and on amending and supplementing Act No 455/1991 on Licensed Trades (Small Business Act), as amended (*zákon č. 448/2008 Z. z. o sociálnych službách a o zmene a doplnení zákona č. 455/1991 Z. z. o živnostenskom podnikaní (živnostenský zákon) v znení neskorších predpisov*).

¹⁹² A social service is defined as 'expert activity, service activity or other activity or activities aimed at a) the prevention of the development of an unfavourable social situation, resolving an unfavourable social situation or mitigating the unfavourable social situation of a natural person, family or community; b) sustaining, renewing or developing the capacity of a natural person to conduct an independent life and supporting their integration into society; c) maintaining the conditions necessary to satisfy the basic needs of a natural person; d) resolving a critical social situation affecting a natural person and their family; e) the prevention of social exclusion of a natural person and their family; f) harmonising a family and work life'. See Slovakia, Social Services Act, 448/2008, Section 2(1).

¹⁹³ Slovakia, Act on Benefits for Compensation of Serious Disability, 447/2008.

The Act on Old-Age Pension Saving contains a prohibition of discrimination clause formulated as a referral to the Anti-discrimination Act.¹⁹⁴ Similarly, according to the Act on Supplementary Pension Saving, discrimination in the performance of supplementary pension saving is prohibited in compliance with the Anti-discrimination Act, unless the Act on Supplementary Pension Saving states otherwise.¹⁹⁵

The right to healthcare guaranteed under the Act on Healthcare, like the right to social security, goes beyond the scope of Directive 2000/43 in terms of the grounds covered. The act contains a principle of equal treatment clause and refers to the Anti-discrimination Act (for grounds, see section 2.1 above).¹⁹⁶

Policyholders (in the field of health insurance) have rights in the exercise of public health insurance in accordance with the principle of equal treatment in healthcare regulated in the Anti-discrimination Act.¹⁹⁷

The only case dealing with multiple discrimination in the field of social protection, social security and healthcare decided by a national court based on anti-discrimination legislation is the case on the discrimination against Roma women in state social support/social advantages in connection with child birth benefits decided by District Court Bratislava I and confirmed by the Regional Court in Bratislava (see section 3.2.7 below), now pending before the Slovak Supreme Court.¹⁹⁸ Another case of discrimination against Roma women in the provision of healthcare (segregation in maternity hospitals) is still pending before the first instance court.

a) Article 3.3 exception (Directive 2000/78)

The social insurance, old-age pension insurance and state social support schemes are guaranteed and administered by the state. The providers of social services are, to a large extent, public bodies (municipalities, self-governing regions or legal persons established by them). This means that national law does not rely on the exception in Article 3(3) of Directive 2000/78 and the principle of equal treatment is also guaranteed in the state social security and social protection schemes.

3.2.7 Social advantages (Article 3(1)(f) Directive 2000/43)

In Slovakia, national legislation prohibits discrimination in social advantages as formulated in the Racial Equality Directive, although judicial interpretation is required regarding social advantages provided by pieces of legislation/regulations other than laws.

Section 5(2)(a) (to be read in conjunction with Section 5(1)) of the Anti-discrimination Act prohibits discrimination on all the grounds contained within it (see section 2.1 above) in

¹⁹⁴ Slovakia, Act No 43/2004 on Old-Age Pension Saving and amending and supplementing certain laws, as amended (*zákon č. 43/2004 Z.z. o starobnom dôchodkovom sporení a o zmene a doplnení niektorých zákonov v znení neskorších predpisov*), Section 9.

¹⁹⁵ Slovakia, Act on Supplementary Pension Saving, 650/2004, Section 7(1). The purpose of supplementary pension saving is to enable a participant in the pension scheme to acquire a supplementary retirement income in old age and a supplementary retirement income after termination of a hazardous occupation (in accordance with the legal classifications), or after termination of work as a dance artist or a musician playing a wind instrument. Within the framework of supplementary pension insurance, an employer pays, on the ground of a contract, a regular contribution for employees to a supplementary pension company.

¹⁹⁶ Slovakia, Act No 576/2004 on Healthcare, Services Related to the Provision of Healthcare and on amending and supplementing certain acts, as amended (*zákon č. 576/2004 Z. z. o zdravotnej starostlivosti, službách súvisiacich s poskytovaním zdravotnej starostlivosti a o zmene a doplnení niektorých zákonov*), Section 11(2)-(6).

¹⁹⁷ Slovakia, Act No 580/2004 on Health Insurance and on amendment and supplementation of Act No 95/2002 on Insurance and on amending and supplementing certain laws, as amended (*zákon č. 580/2004 Z. z. o zdravotnom poistení a o zmene a doplnení zákona č. 95/2002 Z. z. o poisťovníctve a o zmene a doplnení niektorých zákonov v znení neskorších predpisov*), Section 29.

¹⁹⁸ Decision of the District Court Bratislava I, No 12C 231/2010, 16 May 2014 confirmed by the decision of the Regional Court in Bratislava, No 14Co/552/2014-180, 26 September 2017.

the area of, inter alia, access to and provision of social advantages. However, the duty to observe the principle of equal treatment in the area of social advantages only applies 'in connection with special laws' in this field (see below for a more detailed explanation).

The Anti-discrimination Act does not contain any definition of social advantages. The interpretation of the concept will therefore depend on future practice and potential judicial interpretation.

Within the context of state social support as defined by Slovak legislation, Act 383/2013 on Childbirth Allowance and on Allowance for More Concurrently Born Children appears to be very problematic as it is in breach of Directive 2000/43. In particular, it contains provisions on providing childbirth allowance that have discriminatory effects on Roma women (but also, in principle, on all women in general).

Section 3(4)(b) of the act conditions a payment of a state childbirth allowance upon not leaving the maternity hospital in a way that conflicts with a legal regulation on releasing a patient from a healthcare facility.¹⁹⁹ The provision referred to is the Act on Healthcare, which stipulates that in situations when a release is not medically substantiated, healthcare providers are obliged to release a patient from a healthcare facility if the patient requests them to do so.²⁰⁰ However, the formulation of the relevant provisions, the lack of mechanisms guaranteeing that requests for release are handled by the hospital staff, and the common and normalised practice of detaining all women in maternity hospitals for three to five days after childbirth, all create an impression that women must follow a special procedure when they wish to leave a maternity hospital, or that they have special duties to fulfil in order to leave a hospital. Such legal regulation creates situations of uncertainty and a power imbalance that prevents women from deciding freely and voluntarily on the length of their stay in a maternity hospital after childbirth. The situation has a disproportionate effect on Roma women, who, in many cases, leave the hospital because of caring responsibilities for other children and as a result of discrimination and hostility in the hospital – afterwards they come back to collect their child.²⁰¹

The challenged provision is now subject to proceedings initiated by an *actio popularis* that was filed by the Centre for Civil and Human Rights (see section 2.1.2). The case is pending before the Slovak Supreme Court, after having been dismissed by the first instance and appeal courts.²⁰²

Other provisions of the same act can also be held to be discriminatory towards Roma women (but they can also be discriminatory towards other women). For example, Section 3(4)(a) of the act states that entitlement to the childbirth allowance only exists if the mother has visited a gynaecologist once a month from the fourth month of her pregnancy until giving birth. For the reasons outlined above (discrimination against Roma women in healthcare facilities, caring responsibilities etc.), this provision is equally discriminatory and should be abolished.²⁰³

¹⁹⁹ This is the wording of Section 3(4)(b) as of 30 June 2014 (after an amendment of Act No 185/2014). Before this amendment, Section 3(4)(b) of Act 383/2013 on Childbirth Allowance and on Allowance for More Concurrently Born Children, stipulated that a woman who leaves her child in the maternity hospital following his or her birth, without prior consent from the maternity hospital, has no right to childbirth allowance.

²⁰⁰ Slovakia, Healthcare Act, 576/2004, Section 9(6)(c). Section 9(6)(c) of the Healthcare Act reads as follows: '[A healthcare provider shall release a person from facility-based care] upon her own request, or upon the request of her legal representative if she, despite an adequate amount of information received, refuses the facility-based care, unless the facility-based care is ordered by a court or unless a facility-based care the legality of which is decided upon by a court is at stake.'

²⁰¹ If women want to leave maternity hospital, they are often told that they may leave, but that the child has to remain in the hospital (which is, of course, against the law).

²⁰² Decision of the District Court Bratislava I, No 12C 231/2010, 16 May 2014. Decision of the Regional Court in Bratislava, No 14Co/552/2014-180, 26 September 2017.

²⁰³ It is also discriminatory against all women in principle, as it interferes with their right to decide freely on various aspects of their reproductive health.

In 2015, the Centre for Civil and Human Rights issued analyses of specific provisions of domestic legislation that are incompatible with anti-discrimination legislation and constitute indirect discrimination. Aside from the provisions mentioned above, the centre also identified other discriminatory provisions, specifically Section 4(3) of the Parental Care Allowance Act, 571/2009 and Article 12a of the Child Allowance Act, 600/2003.²⁰⁴ In this regard it should be noted that the UN Committee on the Rights of the Child in its concluding observations from July 2016 called on Slovakia to amend the discriminatory legislation making the rates of payment of child benefit, parental care allowance and child birth allowance conditional on compliance with preventive measures. The Committee has stated that this legislation is largely ineffective and has a disproportionately negative effect on the socioeconomic wellbeing and right to social security of marginalised Roma families and their children.²⁰⁵

The problem with regard to social advantages is the statutory provision contained in Section 3(2) of the Anti-Discrimination Act, stipulating that the right to equal treatment only applies in connection with another substantive right provided for by *law*. Given the fact that many of the benefits that come within the scope of social advantages would be provided by generally binding legal enactments other than laws (for example, Government decrees, ministerial ordinances, generally binding ordinances of self-governing bodies or municipalities etc.), this legislative solution raises serious doubts as to whether the transposition of the directives is correct.

By reducing the scope of rights to be applied in accordance with the principle of equal treatment to those that are regulated by special 'laws', the public authorities can easily circumvent the directives by adopting measures of lower legal force than laws (although this particular issue has not yet been raised in the courts).

3.2.8 Education (Article 3(1)(g) Directive 2000/43)

In Slovakia, national legislation prohibits discrimination in education as formulated in the Racial Equality Directive.

Sections 5(1) and 5(2)(c) of the Anti-discrimination Act stipulate the duty to observe the principle of equal treatment and prohibit discrimination on all the grounds contained within the act, including in the area of education.

The Schools Act establishes 'equal access to education, taking into account the special educational needs of the individual and her/his responsibility for her/his education',²⁰⁶ as well as the 'prohibition of all forms of discrimination, and especially segregation',²⁰⁷ as two of the principles on which education should be based. The act also defines 'school integration' as 'education of children and pupils with special educational needs in school classes and school facilities designed for children or pupils without special educational needs'.²⁰⁸ There is no particular definition of segregation in Slovak legislation.

²⁰⁴ Poradňa pre občianske a ľudské práva (Centre for Civil and Human Rights) (2015), *Monitoring vybraných právnych predpisov a analýza ich nesúlady s antidiskriminačným právom* (The monitoring of specific legislation and analyses of their incompatibility with anti-discrimination law) available in Slovak at <https://www.poradna-prava.sk/sk/dokumenty/monitoring-vybranych-pravnych-predpisov-a-analyza-ich-nesuladu-s-antidiskriminacnym-pravom/>; see also European Roma Rights Centre and Centre for Civil and Human Rights (2015), *Written Comments Concerning Slovakia for Consideration by the Committee on the Rights of the Child at the 72nd Pre-Sessional Working Group (5 - 9 October 2015)* available at <https://www.poradna-prava.sk/en/documents/written-comments-for-the-un-committee-on-the-rights-of-the-child/>.

²⁰⁵ UN Committee on the Rights of the Child (2016), *Concluding observations of the Committee on the Rights of the Child on the combined third to fifth periodic reports of Slovakia*. CRC/C/SVK/CO/3-5. para. 43a.

²⁰⁶ Slovakia, Schools Act, 245/2008, Section 3(c).

²⁰⁷ Slovakia, Schools Act, 245/2008, Section 3(d).

²⁰⁸ Slovakia, Schools Act, 245/2008, Section 2(s). However, the act does not define in more detail what such integration would mean.

a) Pupils with disabilities

In Slovakia, the general approach to education for pupils with disabilities does raise problems. In general, it can be said that the way in which the system of education is designed (not only in terms of legislation but also in terms of the everyday practice) perpetuates the exclusion of pupils with disabilities from mainstream education.

Sections 94-102 of the Schools Act contain provisions on children and pupils with a 'health disadvantage'. A child or pupil with a 'health disadvantage' is defined, in Section 2(k) of the act, as a child or pupil with a 'disability', who is 'ill or their health is impaired', who has 'developmental disorders', or a 'behavioural disorder'. A child or a pupil with disability is defined in Section 2(l) to mean a child or a pupil with a 'mental'²⁰⁹ disability, hearing impairment, visual impairment, physical impairment, communication ability disorder, autism, or with other pervasive developmental disorders, or with multiple disabilities'. Section 94 states that the education of children and pupils with health disadvantage should take place in schools for children with health disadvantages (called 'special schools') or in other schools (kindergarten, primary school, secondary schools, practical schools and training institutions), either in special classes or in classes or educational groups together with other children/pupils of the school (in which case the child/pupil can have an individual educational programme).

The act itself does not state on what criteria the choice between these three forms of schooling for children/pupils with health disadvantages should be made. Given the fact that many schools – in terms of premises, facilities and staff – are not adapted to the needs of children with health disadvantages, it is likely that many children are put in special schools unnecessarily, and in breach of the principle of inclusive education and non-segregation. However, that allegation can only be substantiated with anecdotal and empirical evidence, rather than with complex and reliable data.

Another matter of serious concern is diagnostics. A type of institution authorised to carry out diagnostics is a centre for special pedagogical counselling; such centres are often attached to special schools or are staffed by employees of special schools. This raises serious concerns about the possibility of a conflict of interests.²¹⁰

In 2015, the Supreme Court decided an important case regarding the right to inclusive education of children with disabilities.²¹¹ The claimant was a female child with an intellectual disability and a hearing impairment who was refused enrolment at a mainstream primary school.

The Supreme Court quashed the decision of the director of the mainstream school and that of the local government district and ordered the latter to continue conducting proceedings in the case. It applied the CRPD and noted that, according to the Slovak Constitution, the CRPD is a part of the Slovak legal order and takes precedence over the national legislation, and hence it was the duty of the school director and the local government district to interpret the provisions of the Schools Act in accordance with it. The Supreme Court noted that the defendant's argument that the inability of a mainstream school to provide special conditions for a child with special educational needs justifies non-enrolment of such a child at the school could not be accepted in this case, mainly because the case file did not contain any evidence on whether the school director was actively trying to create special conditions for the complainant. The Supreme Court also noted that neither the school director, nor

²⁰⁹ In Slovak, the act uses the word 'mental' (and not, for example, 'intellectual').

²¹⁰ See for example Farenzenová, M., Kubánová, M., Salner, M. (2013), *Cestovná mapa pre riešenie nadmerného zastúpenia rómskych detí v špeciálnom školstve* (Travel map to address an overrepresentation of Roma children in special education), Slovak Governance Institute, p. 44. available at: <http://stary-web.governance.sk/assets/files/publikacie/cestovna-mapa.pdf>.

²¹¹ Judgment of the Supreme Court of the Slovak Republic, No. 7Sžo/83/2014, 24 September 2015.

the local government district, nor the regional court specified what comprised the disproportionate or excessive burden for the realisation of reasonable accommodation.

On 17 May 2018 the District Court in Malacky decided a case regarding illegal placement of a Roma child in a special school in a village called Plavecký Štvrtok. The court dismissed the claim in all parts. It held that the claimant did not prove that he had been discriminated against. For further detail about the case, see section 12.2 of this report.

b) Trends and patterns regarding Roma pupils

In Slovakia, there are specific legal and societal trends and patterns existing in education regarding Roma pupils, such as segregation.

The segregation of Roma children in education is a very widespread problem, already documented in many reports by national and international NGOs,²¹² as well as by the reports of the Slovak National Centre for Human Rights (the equality body)²¹³ and the Slovak Public Defender of Rights.²¹⁴ Notably, in May 2018 the Public Defender of Rights published a report assessing the implementation of proposed measures against discrimination of Roma children in education from previous years.²¹⁵ The report concludes that measures taken by the Ministry of Education in recent years did not lead to obvious progress and calls on the Government authorities to introduce and implement desegregation measures that are as specific and sustainable as possible.

As a result of on-going discrimination against Roma children in special and mainstream education systems, Slovakia faces infringement proceedings by the European Commission for violating the EU Racial Equality Directive in the practice of discriminating against Roma children in special and mainstream education systems.²¹⁶

One form of segregation of Roma children in education is their placement in 'special classes' or 'special schools'. The legal provisions listed in the section above on educating pupils with disabilities and with a health disadvantage in special schools or special classes are also often relied upon when placing Roma pupils in these schools or classes. This happens after misdiagnosing Roma children with intellectual disabilities (in Slovak, the term 'mental disability' is used).

²¹² See for example European Commission against Racism and Intolerance (2014), *ECRI Report on Slovakia (fifth monitoring cycle)*, CRI(2014)37, points 125-132, available at:

<http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Slovakia/SVK-CbC-V-2014-037-ENG.pdf>.

Amnesty International, European Roma Rights Centre (2017), *A Lesson in Discrimination: Segregation of Romani Children in Primary Education in Slovakia*, available at:

<https://www.amnesty.org/en/documents/eur72/5640/2017/en/>.

²¹³ See Slovak National Centre for Human Rights (Slovenské národné stredisko pre ľudské práva) (2018), *Správa o dodržiavaní ľudských práv vrátane zásady rovnakého zaobchádzania v Slovenskej republike za rok 2017* (Report on the observance of human rights including the observance of the principle of equal treatment in the Slovak Republic for the year 2017), p. 56-63, available in English at:

<http://www.vop.gov.sk/files/Sprava%20VOP-Vzdelavanie%20Romov.pdf>.

²¹⁴ See for example Kancelária verejného ochrancu práv (2013), *Správa verejnej ochrany práv o uplatňovaní práva na vzdelanie detí/žiakov príslušníkov rómskej národnostnej menšiny so špeciálnymi výchovno-vzdelávacími potrebami* (Report of the Public Defender of Rights on the Observance of the Right to Education of Pupils/Children, Representatives of Roma National Minority, with Special Educational Needs), available at: <http://www.vop.gov.sk/files/Sprava%20VOP-Vzdelavanie%20Romov.pdf>.

²¹⁵ Public Defender of Rights (Kancelária verejného ochrancu práv) (2018), *Správa verejnej ochrany práv o stave prijatia navrhovaných opatrení z rokov 2013, 2014 a 2015 v oblasti výchovno-vzdelávacieho procesu na Slovensku s cieľom zlepšovania ochrany a dodržiavania základných práv a slobôd osôb* (Report of the Public Defender of Rights on the progress in the implementation of measures from years 2013, 2014 and 2015 in the educational process in Slovakia to improve the protection and observance of individual's basic rights and freedoms), Available at http://www.vop.gov.sk/files/EN_SPRAVA_VOP_vn%C3%BAatorny_audit_skolstvo.pdf.

²¹⁶ The European Commission gave formal notice about starting these infringement proceedings against the Slovakia on 29 April 2015. For more information see e.g. Equinet (2015), 'European Commission's decision to initiate infringement proceedings against Slovakia', <https://www.euractiv.com/>, 30 April 2015. Available at: <http://www.archive.equineteurope.org/European-Commission-s-decision-to->

Under Section 29(11) of the Schools Act, primary schools may, after obtaining approval from the school founder, establish a 'specialised class' for the education of those pupils who are 'not likely to successfully manage the content of education in the corresponding year, in order to compensate them for the lacking content of education'. Pursuant to this provision, the decision to place a pupil in the specialised class is taken by the school director upon a proposal from the class teacher, following consultation with an educational counsellor, and after informed consent from a legal representative of the pupil has been obtained. The placement in a specialised class can only last for the period of unavoidable need and it cannot exceed one school year.

The Schools Act stipulates that 'a child or a pupil whose educational needs stem exclusively from their development in a socially disadvantaged environment cannot be placed in special schools or special classes' (meaning special schools or special classes for children with disabilities or a health disadvantage – see the previous section),²¹⁷ and the education of children from socially disadvantaged environments must be pursued through 'individual conditions', meaning the adjustments of the organisation of education on the one hand and the environment in which education is taking place on the other, as well as the use of special methods and forms of education.²¹⁸ Children from socially disadvantaged backgrounds are to be placed into classes 'together with other children or pupils'. This rule, however, does not apply to cases of placing pupils in zero grade classes²¹⁹ (with informed consent of the legal representative; and to placing pupils in a 'specialised class' pursuant to Section 29(11) (see the previous paragraph)).²²⁰

In summary, Slovakian domestic legislation still retains the concept of a child unable to meet the demands of the system, instead of pursuing the concept of adjusting the system to meet the different needs of different children. Furthermore, the main problem, which is the misdiagnosis and stigmatisation of Roma children as 'mentally disabled' and subsequently placing them in 'special' classes/schools, still persists, as do other forms of segregation of Roma children in education (see below for more detail).

Recent quantitative data drawn from research conducted by the Ministry of Finance of the Slovak Republic in 2018 show that Roma children from marginalised communities remain severely overrepresented in the special education system. More than 16 % of Roma children are educated in special education, which is five times more than in the overall Slovak population. They account for 63 % of all children educated in special classes and 42 % of all children educated in special schools.²²¹ Special classes/special schools for children with intellectual disabilities follow reduced curricula and thus offer very limited opportunities for subsequent education. The poor diagnostics leading to the placement of Roma children in these classes/schools results from, for example: universal diagnostic tools not being adjusted to the specific social circumstances and needs of Roma children; the relative inability of Roma people to speak the official language of Slovakia; the fact that their social skills may not be adapted to the conventions of the majority population; the general cultural bias of the diagnostic tests and the lack of time that the person conducting the diagnostic tests has for each child.²²² Due to various factors (such as fear of

²¹⁷ Slovakia, Schools Act, 245/2008, Section 107(2).

²¹⁸ Slovakia, Schools Act, 245/2008, Section 107(1).

²¹⁹ Zero grade classes can be established pursuant to Section 60(4) of the Schools Act.

²²⁰ Slovakia, Schools Act, 245/2008, Section 107(3).

²²¹ Ministry of Education, Science, Research and Sport of the Slovak Republic (2019) *Revízia výdavkov na skupiny ohrozené chudobou a sociálnym vylúčením: Priebežná správa* (Revision of expenses for groups threatened by poverty and social exclusion: Interim report), January 2019. p. 21, available at: <https://www.minedu.sk/revizia-vydavkov-na-skupiny-ohrozene-chudobou-alebo-socialnym->

²²² On racially discriminatory diagnostics, see the report of the Slovak ombudswoman of 2014 - Public Defender of Rights (Verejná ochrankyňa práv) (2014), *Správa verejnej ochrankyne práv: Vplyv testovania školskej spôsobilosti na základné práva dieťaťa z nepodnetného prostredia s kultúrnou, sociálnou, jazykovou bariérou, najmä z rómskej národnostnej menšiny* (Report of the Public Defender of Rights: The Impact of Testing of the School Eligibility on the Fundamental Rights of the Child from a Non-Challenging Environment

discrimination and stigmatisation and hence poor performance, distance from the mainstream school and so on), sometimes parents also support the education of their children in special schools. Another factor contributing to the segregation of Roma children in special schools/classes is the system of subsidies for children in special schools/classes, in which the subsidies are higher than the subsidies for children in mainstream schools.²²³

School segregation, however, exists not only through the placing of Roma children in special schools or classes. It very often happens within standard mainstream schools (for example, segregated classes and floors, segregation within classes and segregated dining, all of which are usually also of lower quality when compared to the education and education-related benefits provided to non-Roma children).

This type of segregation also happens because school authorities are afraid, due to the racial bias/hatred that is omnipresent in society, of losing non-Roma children and thereby the subsidies from the state that are based on the numbers of children on school rolls. It is also not unusual to find purely Roma schools.²²⁴ According to the results of the EU-MIDIS II survey from November 2016, 22 % of Roma children in Slovakia are educated in segregated Roma-only schools.²²⁵ On-going segregation of Roma children in standard mainstream schools and classes was also mapped by recent quantitative research of the Ministry of Finance.²²⁶

In recent years the State School Inspectorate, as the administrative body responsible for overseeing the quality of education in schools, intensified its efforts to uncover the practices of discrimination against Roma children in education. According to reported information, in the school year 2017/2018 the inspectorate conducted inspections and identified four primary schools where the organisation of education indicated segregation of Roma children, either by educating them in separate classes, having separate dressing rooms for them or providing meals in the school canteen separately.²²⁷

The first, and so far the only final case on the segregation of Roma children in education, was decided by the District Court in Prešov in December 2011 and the Regional Court in Prešov in October 2012, based on the *actio popularis* lawsuit filed by the NGO Centre for Civil and Human Rights.²²⁸ The courts decided that the education of Roma children in separate mainstream classes amounts to racial discrimination and undermines the human dignity of segregated Roma children.

with a Cultural, Social, Language Barrier, Mainly from the Roma National Minority), p. 9, available at: <http://www.vop.gov.sk/files/Sprava%20VOP%20FINALNA%20VERZIA.pdf>.

²²³ Every year, each school receives a certain amount of money per pupil from the public funds. This represents the main source of income for schools to enable their everyday functioning.

²²⁴ For more information on the segregation of Roma children in education, see also Centre for Civil and Human Rights (2016), *Written Comments concerning Slovakia for Consideration by the UN Human Rights Committee*, pp. 7 - 9. Available online at <https://www.poradna-prava.sk/en/documents/we-submitted-the-written-comments-to-the-un-human-rights-committee/>. Centre for Civil and Human Rights (2017), *Alternative Report concerning Eleventh and Twelfth Periodic Report of Slovakia*, pp. 8 -10, available at: <https://www.poradna-prava.sk/en/documents/the-report-for-the-un-committee-on-the-elimination-of-racial-discrimination/>. See also Rafael, V. (ed.); various authors (2011), *(De)segregation of Roma pupils in Slovak educational system: Questions and answers*, Bratislava, Nadácia otvorenej spoločnosti, available at: <https://eduroma.sk/docs/odpovede-na-otazky-desegregacie.pdf>.

²²⁵ Second European Union and Discrimination Survey - Roma - Selected Findings (2016), section 2.3.2.

²²⁶ *Revízia výdavkov na skupiny ohrozené chudobou a sociálnym vylúčením: Priebežná správa* (Revision of expenses for groups threatened by poverty and social exclusion: Interim report), January 2019, pp. 42 - 58, available at: <https://www.minedu.sk/revizia-vydavkov-na-skupiny-ohrozene-chudobou-alebo-socialnym-vylucenim-2019/>.

²²⁷ State School Inspectorate (2017), *Správa o stave a úrovni výchovy a vzdelávania v základných školách a školských zariadeniach v Slovenskej republike v školskom roku 2017/2018* (Report on the state and level of education in primary school in the school facilities in a school year 2017/2018), available at: https://www.ssiba.sk/admin/fckeditor/editor/userfiles/file/Dokumenty/velka_sprava/sprava_17_18_1.pdf.

²²⁸ The English translation of the decisions of the first and second instance courts is available online at <https://www.poradna-prava.sk/en/documents/?type=decisions>.

The decision of the regional court also addressed the wider societal context and offered its views and arguments on why segregation is unacceptable, on the meaning of human dignity in the context of (non-)segregation, on the importance and benefits of inclusive education, and on the importance of *actio popularis*.

The court decisions attracted a lot of media attention, which not only publicised the case but also served as a forum for heated debate by many of the parties involved. However, things have not changed in practice and there are no systemic and systematic attempts on the part of the Slovak Government to eliminate the practice of segregation of Roma children in education.

The Government has since introduced measures and allowed practices that show clear signs of being new methods of segregating Roma children in education and ways of perpetuating such segregation.

One of them is the concept of 'container schools' – schools of a lighter building structure that are relatively easy and fast to build. These schools are often built in segregated Roma settlements (the current unofficial estimates state that there are already tens of such schools) where the capacities of the existing schools do not meet the educational needs of the child population and where public money is used for the school's construction.²²⁹ In the view of the author of this report, the Government is supporting a practice that perpetuates further segregation of Roma children, instead of supporting solutions that would include the children in mainstream education (e.g. by subsidising school buses that would transport children from these settlements on a daily basis).

Another existing practice is that of establishing external branches to vocational schools that are already a part of the official secondary education system. Many of these external branches are placed very close to segregated Roma settlements.²³⁰ According to estimates from February 2018 there are 68 state and 44 private branch offices of vocational schools and except for a few that are in prisons, all are thought to be located next to settlements.²³¹ Apart from the geographical and ethnic segregation, the problem is that such schools offer courses/programmes with very low employability prospects (and some of them only last for two years), which often perpetuate gender stereotypes and stereotypes about the Roma (for example, one of the courses, called 'practical woman', is aimed at teaching, among other things, 'the basics of hygiene', 'keeping and maintaining a household', 'basic principles of household economy', 'correct ways of storing and processing foodstuffs and preparing meals', 'correct upbringing and caring for children', etc.), and are generally of very poor quality.²³² In addition, the state subsidy for a pupil enrolled at this type of external branch to a vocational school paid to the school is almost a double the subsidy for a pupil attending a regular secondary grammar school.²³³ Thus the system of financing

²²⁹ The project of container schools introduced by the Government in 2013 was also criticised by Amnesty International in its article from March 2015 based on its realised field monitoring, available at: <https://www.amnesty.org/en/latest/news/2015/03/slovakia-segregation-of-roma-schoolchildren-worsens/>. The Centre for Civil and Human Rights is litigating a case against this type of school segregation, by an *actio popularis*, decided by the District Court Bratislava III, No 11 C 351/2015, on 6 October 2016.

²³⁰ For details about the policy and its implementation, see Balážová, Z. (2015), *Elokované pracoviská stredných odborných škôl pri marginalizovaných rómskych komunitách: Cesta k začleneniu alebo vylúčeniu rómskej mládeže?* (Elocated Branches Of Secondary Trade Schools Situated Near Marginalised Romani Communities: A path toward inclusion or exclusion of Romani youth?), CVEK – Centrum pre výskum etnicity a kultúry, available at: <http://cvek.sk/publikacie/>.

²³¹ Civil Society Monitoring Report on Implementation of the National Roma Integration Strategy in Slovakia, European Commission, February 2018, pp. 61 – 64.

²³² Balážová, Z. (2015) *Elokované pracoviská stredných odborných škôl pri marginalizovaných rómskych komunitách: Cesta k začleneniu alebo vylúčeniu rómskej mládeže?* (Elocated Branches Of Secondary Trade Schools Situated Near Marginalised Romani Communities: A path toward inclusion or exclusion of Romani youth?), CVEK, pp. 62-64.

²³³ Balážová, Z. (2015) *Elokované pracoviská stredných odborných škôl pri marginalizovaných rómskych komunitách: Cesta k začleneniu alebo vylúčeniu rómskej mládeže?* (Elocated Branches Of Secondary Trade Schools Situated Near Marginalised Romani Communities: A path toward inclusion or exclusion of Romani youth?), CVEK, pp. 64-65.

these external branches does nothing but serve as an incentive for the further segregation of Roma pupils in secondary education.

Given the inability of the Slovak Government to effectively address the segregation of Roma children in education and facilitate their school inclusion, the NGO Centre for Civil and Human Rights is currently litigating three *actio popularis* cases addressing different forms of segregation of Roma children in education. Two of those cases address the segregation of Roma children in segregated mainstream schools. The third case challenges the decision of a regional school office that has organised a local school district in a way that concentrates Roma children in one school, instead of supporting their integration in other local schools.

One of the *actio popularis* cases was dismissed by the District Court in Bratislava on 6 October 2016.²³⁴ In that case, the Centre for Civil and Human Rights argued that by not adopting effective measures to eliminate the segregation in a primary school in the town Stará Ľubovňa, the municipality and the responsible State authorities, including the Ministry of Education, are violating domestic and international anti-discrimination legislation. Instead of adopting remedial measures to eliminate discrimination, they expanded the capacity of this primary school by adding a new container following the Government project mentioned above. In its decision, the district court reasoned that Roma children are not segregated at the school since they are educated there based on their permanent residence in a given school district and not based on their ethnic origin. According to the court, no evidence had been presented that would prove Roma children are treated less favourably than children in other schools and thus are disadvantaged. The case is now pending before the appeal court.

The other *actio popularis* cases litigated by the Centre for Civil and Human Rights are currently pending at first instance courts.

In addition, there are two cases currently pending before Slovak courts that specifically address the illegal placement of Roma children in the special educational system, which have been initiated directly by the affected individuals based on the Anti-discrimination Act. The Centre for Civil and Human Rights provides representation for three Roma children arguing their illegal enrolment in special classes in the primary school in a village Hermanovce.

Another case addresses the illegal placement of a Roma child in a special school in a village called Plavecký Štvrtok. On 17 May 2018, the District Court in Malacky dismissed the claim in all parts. It held that the claimant did not prove that he had been discriminated against. The court did not find the school responsible, as it had only followed existing legislation. According to the court, the school could not influence the current domestic legislation and the claimant's assessed abilities. The court did not agree with the claimant that his psychological assessment was biased as it did not take into account the fact that the claimant grew up in Roma family whose first language was Roma with a west Slovakian dialect and that his knowledge of the Slovak language was poor. According to the court it had been proved during the proceedings that the claimant had a proper knowledge of the Slovak language. The decision was not final, and the claimant filed an appeal.²³⁵

3.2.9 Access to and supply of goods and services that are available to the public (Article 3(1)(h) Directive 2000/43)

In Slovakia, national legislation in principle prohibits discrimination in: access to and supply of goods and services as formulated in the Racial Equality Directive, although judicial

²³⁴ Decision of the District Court Bratislava III in the case brought by the Centre for Civil and Human Rights against the State represented by the Ministry of Education and the city of Stará Ľubovňa from 6 October 2016. No. 11C/351/2015-387.

²³⁵ Decision of the District Court in Malacky, No. 5C/212/2014, 17 May 2018.

interpretation is required regarding goods and services provided on the basis of legislation/regulations other than laws (in practice, this would be mainly the case of public services provided by municipalities and self-governing regions). The national legislation in this area does not cover the protection from discrimination in access to goods/services that are provided by natural persons, who are not entrepreneurs.

Sections 5(1) and 5(2)(d) of the Anti-discrimination Act prohibit discrimination on all the grounds contained in the Anti-discrimination Act (see section 2.1 above) in conjunction with special laws in the area of access to and provision of 'goods and services including housing which are provided to the public by legal entities and natural persons [who are] entrepreneurs'. The formulation 'in conjunction with special laws' is very problematic, since it may potentially exclude goods and services provided on the basis of legal acts of lower legal force than laws (e.g. governmental regulations or ordinances of ministries) or generally binding regulations of municipalities or self-governing regions (see section 3.2.7 above for more details). However, such discriminatory legal acts can be challenged in administrative proceedings before the Slovak Trade Inspectorate, as well as before the various prosecution offices under their duty to review the legality of generally binding regulations. In practice, the second option remains theoretical due to the lack of relevant expertise, particularly among prosecutors.

a) Distinction between goods and services available publicly or privately

In Slovakia, national law distinguishes between goods and services that are available to the public (e.g. in shops, restaurants, banks) and those that are only available privately (e.g. limited to members of a private association).

The wording of Sections 5(1) and 5(2)(d) of the Anti-discrimination Act (see the introductory text to this section, above) clearly shows that the application of the prohibition of discrimination will be limited to the sale of goods and provision of services carried out in public and targeted at the public. The provisions of the Anti-discrimination Act do not apply to goods and services offered or provided on a private basis (e.g. providing or offering goods to members of a private association, family etc).

3.2.10 Housing (Article 3(1)(h) Directive 2000/43)

In Slovakia, national legislation in principle prohibits discrimination in the area of: housing as formulated in the Racial Equality Directive, although judicial interpretation is required regarding housing provided on the basis of legislation/regulations other than laws. This prohibition does not apply to housing provided by natural persons, who are not entrepreneurs. In practice, it may narrow the possibilities of challenging discrimination in specific cases that have been documented in Slovakia, such as Roma people being denied the opportunity to rent a flat or house by a natural person, who is the property owner.²³⁶

Sections 5(1) and 5(2)(d) of the Anti-discrimination Act prohibit discrimination on all the grounds contained in the Anti-discrimination Act (see section 2.1 above) in conjunction with special laws existing in the area of access to and provision of 'goods and services including housing which are provided to the public by legal entities and natural persons [who are] entrepreneurs'.

The act does not provide any definition of 'housing'.

What is problematic is the link to 'special laws', which must contain the right to housing/associated rights in order to be able to be invoked in cases of breaches of the equal treatment principles (in connection to housing). This may hinder the rights stemming from the directives being invoked in cases when the right to housing and related rights

²³⁶ The information are based from field monitoring of the Slovak grassroots NGO Centre for Civil and Human Rights provided by programme coordinator Stefan Ivanco on 18 June 2019.

would be regulated under types of generally binding legal acts other than laws (such as governmental decrees, ministerial ordinances, generally binding ordinances of self-governing bodies or municipalities etc; see also section 3.2.7).

a) Trends and patterns regarding housing segregation for Roma

In Slovakia, there are trends and patterns of housing segregation and discrimination against the Roma.

The issue of Roma housing segregation has been increasing in scope and severity in recent years and comprises various aspects. Generally speaking, out of the 400 000 Roma living in Slovakia, only 46.5 % live scattered among the majority population. The rest live concentrated inside municipalities (11.5 %), at the edge of municipalities (23.6 %), or in segregated settlements (18.4 %).²³⁷ Altogether there are 231 segregated 'concentrations',²³⁸ with the average distance from the closest municipality being 900 m (and the biggest distance being 7 km). Of the people living in the concentrations, 11 % do not have access to drinking water. For 75 concentrations, there are only gravel or other country roads leading to the settlement.²³⁹ The further away a concentration with Roma inhabitants is from a municipality, the poorer the housing conditions of its inhabitants.²⁴⁰ The Slovak Constitution does not entrench the right to housing, and the Slovak Republic opted out of the provision on the right to housing in the Revised European Social Charter.

Furthermore, Roma in Slovakia living in segregated settlements face an increased threat of forced eviction. This is due to changes in land-ownership and limited legal protection against forced evictions. In the past many Roma built their houses on state-owned property. However, due to the processes of land privatisation and decentralisation in the last three decades, from which Roma rarely benefitted, these lands are now owned by private persons or municipalities, who may initiate demolition proceedings at any time.²⁴¹

Governments in Slovakia have been implementing housing development programmes by means of which low-cost municipal rental apartments and technical infrastructure have been funded, and these programmes have had some positive results (including increased quality of life and school attendance). However, at the same time they have also contributed to increasing segregation of Roma communities, because the new apartments have not been built within municipalities but in distant localities, often with very poor infrastructure. The construction quality of the newly built housing is also frequently very poor and the housing is expensive to maintain.

Another problem is that municipalities and towns often develop their local planning policies in a manner that promotes ethnic segregation. In February 2018, civil society organisations reported deliberate and systemic practices that effectively prevent Roma from being able to move out of segregated, impoverished and often illegally occupied areas.²⁴²

²³⁷ *ATLAS rómskych komunít na Slovensku 2013* (Atlas on Roma Communities in Slovakia 2013) (2013), Available at: http://www.minv.sk/?atlas_2013.

²³⁸ The term 'Concentration' is used in the *Atlas on Roma Communities in Slovakia 2013*.

²³⁹ *Prvé výsledky ATLASU rómskych komunít na Slovensku 2013* (The First Results of the Atlas on Roma Communities in Slovakia 2013) (2013). The first results provided selected summarised data from the Atlas. The document is available at http://www.minv.sk/?atlas_2013.

²⁴⁰ See for example Filadelfiová, J.(2013), *Situačná analýza vybraných aspektov životnej úrovne domácností vylúčených rómskych osídlení* (Situational Analysis of Selected Aspects of the Living Standard in Excluded Roma Settlement Households), Bratislava, UNDP, p. 8.; http://www.ivo.sk/buxus/docs/publikacie/subory/A_Situational_Analysis_of_Selected_Aspects_Marginalized_Roma_Settlements.pdf

²⁴¹ See European Roma Rights Centre (2017), *Written Submission concerning Slovakia for Consideration by the UN Committee on the Elimination of Racial Discrimination*, available at: <http://www.errc.org/cms/upload/file/slovakia-cerd-submission-5-november-2017.pdf>.

²⁴² European Commission (2018), *Civil Society Monitoring Report on Implementation of the National Roma Integration Strategy in Slovakia*, February 2018, p. 34.

There are also structural barriers that contribute to the fact that regular standard social housing is practically inaccessible to the Roma. The regular standard of social housing is often conditioned by a requirement for employment (of at least one family member) or of a minimum level of income. Roma people are much less likely to meet such requirements than the non-Roma population.

In connection with lower-standard social housing and its almost exclusive availability to Roma people only, it is also important to note that the overall funding for this type of housing provided by the Government has been dramatically reduced in the last few years. Also, the requirements on the standards for such housing are reducing (e.g. a reduction in the minimum size of the apartments, a lowering of the requirements in relation to equipment and sanitation etc). When considered together with the fact that it is almost exclusively the Roma who are provided with this type of social housing, it is clear that the regulation and practice is, at least, indirectly discriminatory.

The updated action plan on housing was adopted by the Slovak Government on 22 February 2017 and its goals include reducing residential segregation of marginalised Roma communities.²⁴³ This particular goal is supposed to be pursued by enhancing the individual integration of citizens from marginalised Roma communities by facilitating their access to the system of social housing.²⁴⁴ The system is supposed to be multi-staged and thus provides social housing of different quality, which should enable people from marginalised Roma communities to gradually improve their standard of living, provided that they meet the given conditions (such as paying rent on time). The updated action plan on housing that has been drafted in 2018 reiterates the importance of reducing the residential segregation of marginalised Roma communities and supporting their integration through building a system of multi-staged social housing. It includes setting the methodology of such a system and introducing it in practice. The updated action plan had not yet been adopted as of the end of 2018.

In March 2018, a case alleging discrimination in housing was decided by national courts and the decision became final.²⁴⁵ The case concerns moving Roma families who previously lived in the centre of the town of Sabinov (Eastern Slovakia) in commercially attractive houses (mainly by virtue of their location) to social housing owned by the municipality in a new location one kilometre from the town boundary. The new area chosen by the municipality was totally isolated from the town and had very poor infrastructure. Construction of the social housing was subsidised by the Ministry of Transport and Construction of the Slovak Republic.

The Prešov Regional Court confirmed the decision of the first instance court from October 2012 and fully agreed with its reasoning as well as respecting a reasoning of the Supreme Court on the merits of the case from April 2017.²⁴⁶ The regional court concluded that only Roma were moved to social housing in a segregated area of town, so they were treated differently from the other inhabitants and thus faced discriminatory treatment on the ground of their ethnic origin, for which the town is responsible. The regional court further stated that the implementation of anti-discrimination legislation by state authorities and municipalities in practice is not sufficient. In this context, the Ministry of Transport as a

²⁴³ Slovak Government (2017), *Aktualizované akčné plány stratégie Slovenskej Republiky pre integráciu Rómov do roku 2020 na roky 2016-2018 pre oblasti: D.2.1 Oblasť vzdelávania, D.2.2 Oblasť zamestnanosti, D.2.3 Oblasť zdravia, D.2.4 Oblasť bývania a nový akčný plan D.2.5 pre oblasť finančného začlenenia* (Updated action plans of the Strategy of the Slovak Republic for Integration of Roma up to 2020 for areas of D.2.1 Area of Education, D.2.2 Area of employment, D.2.3 Area of health, D.2.4 Area of housing and a new action plan D.2.5 for the area of financial inclusion), p. 36 – 44, available at: <http://www.rokovania.sk/Rokovanie.aspx/BodRokovaniaDetail?idMaterial=26278>.

²⁴⁴ The concept of social housing in Slovakia is defined in the Act on Subsidies for Housing Development and on Social Housing, 443/2010, Section 23. It is a model of housing that is acquired using public funds that aims to secure appropriate and dignified housing for people who are not able to secure such housing by themselves.

²⁴⁵ Decision of the Regional Court of Slovak Republic, No. 13 Co 38/2017, 20 March 2018.

²⁴⁶ Decision of the Supreme Court of the Slovak Republic, No 5 Cdo 18/2015 – 202, 19 April 2017.

state authority had the duty to protect human rights not only in theory, but also in practice. According to the court, the Ministry of Transport was obliged to examine circumstances under which the subsidy was supposed to be used in a broader context and to consider whether use of the subsidy eventually led to the segregation of the Roma minority. In line with the decision of the Supreme Court, the regional court pointed out the positive obligation of the state authorities to prevent discrimination. As for the amount of non-pecuniary damage, the regional court concluded that amount of EUR 1 000 awarded to each of the eight claimants was adequate for the violations that occurred. For more details see section 12.2 of this report.

4 EXCEPTIONS

4.1 Genuine and determining occupational requirements (Article 4)

In Slovakia, national legislation provides for an exception for genuine and determining occupational requirements.

The Anti-discrimination Act defines genuine and determining occupational requirements in Section 8(1), stipulating that

'a treatment that is justified by the nature of occupational activities or by the circumstances under which such activities are carried out, if the ground constitutes a genuine and determining occupational requirement, shall not constitute discrimination, provided that the objective is legitimate and the requirement is proportionate.'

There is no explicit reference to which particular grounds this exception is applicable to, although it can be assumed that it will apply to all the grounds mentioned in the Anti-discrimination Act (see section 2.1 above). Nevertheless, there has not yet been any case law on this matter and it will be interesting to see whether the courts will impose a strict interpretation of the 'grounds' context that would follow from the wording of the act ('on the ground of') or will apply the wording of the provisions of the directives ('related to any of the grounds ...').

4.2 Employers with an ethos based on religion or belief (Article 4(2) Directive 2000/78)

In Slovakia, national law provides for an exception for employers with an ethos based on religion or belief.

Section 8(2) of the Anti-discrimination Act stipulates that

'in the case of registered churches, religious societies and other legal entities whose activities are based on religion or belief, differences of treatment based on religion or belief shall not constitute discrimination where they are related to employment by or to carrying out activities for such organisations and where, by reason of the nature of occupational activities or the context in which they are carried out, a person's religion or belief constitute a fundamental legitimate²⁴⁷ and justified occupational requirement.'

The current version of the Anti-discrimination Act does not contain any provision that would explicitly entitle the above-defined organisations to require the individuals who are employed by them or carry out activities for them to act in good faith and with loyalty to the organisation's ethos.

There is no case law on the issue.

In Slovakia there are no specific provisions that would explicitly deal with conflicts between rights of organisations with an ethos based on religion or belief and other rights to non-discrimination. However, the absence of any provisions enabling religious organisations to exercise exceptions that would impact on other rights to non-discrimination and the existing case law indicate that in (potential) conflicts, other rights to non-discrimination would take precedence.

²⁴⁷ A comma is missing between the words 'fundamental' and 'legitimate' in the act.

As regards organisations with a special ethos connected with their religion or belief, the relevant legislation states that there will be no right to interfere with such an organisation's internal matters.²⁴⁸

However, internal orders of religious organisations should not violate generally binding legal acts (including the Constitution and the Anti-discrimination Act). There is one known case relating to the conflict between the rights (and rules) of churches, religious or similar organisations and the rights of individuals who enter into real or potential relationships with such organisations. The case, decided by the Constitutional Court in 2001,²⁴⁹ concerned a priest of the Roman Catholic Church, who had made a claim related to his employment rights (right to remuneration)²⁵⁰ before the ordinary courts against his church, which was also his employer. The ordinary courts (district and regional courts in Nitra) dismissed the case, stating that they could not deal with it and apply Slovak labour legislation, due to the fact that ecclesiastical law has priority in this case.

The Constitutional Court refused this argumentation, confirming that all citizens have the right to access courts that make rulings pursuant to the laws of Slovakia (and not to, for example, religious rules),²⁵¹ and holding that the district and regional courts in Nitra violated the applicant's right to seek the protection of his rights before an independent and impartial court without discrimination (in accordance with Article 46(1) of the Constitution).

– Religious institutions affecting employment in state-funded entities

In Slovakia, religious institutions are permitted to select people (on the basis of their religion) to be hired or dismissed from a job when that job is in a state entity, or in an entity financed by the state.

In addition to a teaching qualification, teachers of religion in state schools must obtain authorisation from the church or a religious society, issued by the relevant church/religious authorities. This follows the Agreement between the Slovak Republic and the Holy See on Catholic Upbringing and Education.²⁵² Subsequently, an agreement between the Slovak Republic and Registered Churches and Religious Societies on Religious Upbringing and Education was signed with identical provisions regarding religious education in state schools.²⁵³ Due to the strict rules for the registration of churches and religious societies in Slovakia (see section 2.1.1 above), only Christian and Jewish churches and organisations are currently registered. Students at state secondary schools have the right to choose between religious education and ethics. The authorisation of teachers of religious education is exercised mostly by the two biggest churches – the Roman Catholic Church and the Evangelical Church.

There is no case law on the issue.

²⁴⁸ Slovakia, Act on Freedom of Religious Belief and Status of Churches or Religious Societies, 308/1991, Section 5(2) stipulates that 'Churches and religious societies administer their own affairs and, in particular, appoint their bodies, their priests and establish orders and other institutions independently of state authorities'.

²⁴⁹ Decision of the Constitutional Court of the Slovak Republic, No III. ÚS 64/00-65, 31 January 2001.

²⁵⁰ However, the decision of the Constitutional Court does not make it clear whether the original labour dispute was discrimination-related.

²⁵¹ The Constitutional Court stated that '...[i]f a spiritual activity is carried out in the framework of a legal relationship, this kind of employment relationship, similar or civil relationship is ruled by the respective laws of the Slovak Republic and the internal rules of churches and religious societies can be applied only within its framework'.

²⁵² Published in the Collection of Laws under No 394/2004.

²⁵³ Published in the Collection of Laws under No 395/2004.

4.3 Armed forces and other specific occupations (Article 3(4) and Recital 18 Directive 2000/78)

In Slovakia, national legislation provides for an exception for the armed forces in relation to age and disability discrimination (Article 3(4), Directive 2000/78).

Section 4(1)(b) of the Anti-discrimination Act stipulates that the provisions of the Anti-discrimination Act do not apply to 'differential treatment based on disability or age that follows from provisions of special legal acts regulating the service of armed forces, armed security services, armed corps, the National Security Office, the Slovak Information Service and the Fire and Rescue Service.'

The exception does not apply to employees who carry out activities for the above institutions within the framework of employment relationships regulated by the Labour Code (e.g. auxiliary staff).

Section 4(1)(c) stipulates that the provisions of the Anti-discrimination Act do not apply to

'differential treatment based on disability or age that follows from provisions of special legal acts regulating the training for the defence of the State by soldiers of voluntary military training, the training for the exercise of extraordinary service in the armed forces of the Slovak Republic, and the exercise of tasks of armed forces by reservists who are categorised as active reservists.'

4.4 Nationality discrimination (Article 3(2))

a) Discrimination on the ground of nationality

In Slovakia, national law includes exceptions relating to difference of treatment based on nationality.

Differential treatment based on a person's nationality (meaning 'citizenship' under Slovak legislation) is permitted under the Anti-discrimination Act, insofar as it results from the legal requirements for the entry and residence of foreigners in Slovakia, including the treatment of these foreigners, which is provided for under separate legal regulations.²⁵⁴ This is not applicable to citizens of the European Union, citizens of any state that is party to the European Economic Area Agreement, Swiss citizens and stateless persons and their family members.²⁵⁵

Separate legal conditions regarding foreigners apply mostly to the fulfilment of special requirements for granting permission for business activity, employment or study in Slovakia. Restrictions also apply to access to certain occupational positions and social assistance services. However, in other areas, discrimination on the ground of nationality ('citizenship' under Slovak legislation) is prohibited under the legal regime of the Anti-discrimination Act. This follows from the open-ended list of prohibited grounds of discrimination contained in the act, which implicitly includes nationality ('citizenship') among the prohibited grounds of discrimination in most areas covered by the directives.

In Slovakia, nationality (as in citizenship) is not explicitly mentioned as a protected ground in national anti-discrimination law, but is prohibited as mentioned above under the open-ended list of prohibited grounds of discrimination contained in the Anti-discrimination Act. Judicial interpretation is required in this regard.

²⁵⁴ Slovakia, Act on the Residence of Foreigners, 404/2011 and Slovakia, Asylum Act 480/2002. Both of these acts regulate legal status, conditions for granting permission for business activities, employment, study and stay of foreigners and asylum seekers.

²⁵⁵ Slovakia, Anti-discrimination Act, 365/2004, Section 4(1)(a).

b) Relationship between nationality and 'racial or ethnic origin'

The Slovak language and Slovak legislation draw a distinction between citizenship, nationality (*národnosť*) and ethnicity.

In practice, a member of the Hungarian minority, being a Slovak national, would fall within the ground 'national origin', whereas Roma people are considered to be an ethnic group.

There is no case law that deals with distinctions or overlaps between citizenship, nationality, and 'race or ethnic origin'.

4.5 Work-related family benefits (Recital 22 Directive 2000/78)

a) Benefits for married employees

In Slovakia, it would constitute unlawful discrimination in national law if an employer only provides benefits to those employees who are married.

The Anti-discrimination Act does not explicitly lay down any rules as far as work-related benefits for spouses or life partners are concerned. However, it can be argued that work-related benefits in respect of spouses or life partners fall under the employment-related list of areas for which the duty to observe the principle of equal treatment applies, as the list of these areas in Section 6(2)(b) of the act is non-exhaustive. Given the fact that the Anti-discrimination Act explicitly prohibits discrimination on the ground of family status and marital status, it can be argued that if an employer provided benefits limited to those employees who are married, this amounts to indirect discrimination on a ground of sexual orientation as marriage is not available to same-sex couples.

In addition, the Labour Code stipulates the duty of the employer to act in conformity with the principle of equal treatment and refers to the Anti-discrimination Act (which contains the above-mentioned grounds).²⁵⁶ Therefore, any discriminatory rules or measures in the provision of work-related family benefits are prohibited.

On the other hand, the Labour Code contains a few specific provisions that are discriminatory (either directly or indirectly or both) in relation to family/marital/personal status. Under Section 141(2)(d) of the Labour Code, an employee is entitled to paid leave of an overall duration of three days on the death of their husband or wife. In the case of the death of a cohabiting different-sex partner, there is no entitlement to any leave.

There is no case law on potentially discriminatory provision of family benefits with regard to marital and/or family status. The 'Action Plan for LGBTI People for 2016-2019' published by the Ministry of Justice in 2015 also aimed to address the barriers that unmarried couples (both same sex and different sex) face in realising their rights and its measures included a proposal for relevant legislative changes, if necessary. However, as of the end of 2018, the action plan has not yet been adopted (see section 9 of this report).

b) Benefits for employees with opposite-sex partners

In Slovakia, it constitutes unlawful discrimination in national law if an employer only provides benefits to those employees with opposite-sex partners (sexual orientation is a prohibited ground of discrimination for all fields covered by the act).

In contrast to this, the Labour Code contains a few specific provisions that are discriminatory (either directly or indirectly or both) with regard to sexual orientation.

Under Section 141(2)(d) of the Labour Code, an employee is entitled to paid leave of an

²⁵⁶ Slovakia, Labour Code, 311/2001, Section 13.

overall duration of three days on the death of their husband or wife (there is no mention of a same-sex marriage or of any other officially registered partnership). In the case of the death of a cohabiting same-sex partner there is no entitlement to any leave. Similarly, the Labour Code grants time off from work when a child is born to an employee – for the time necessary to transport the child’s mother to hospital and back (but not for the time needed to attend the birth).²⁵⁷ In practice, this covers only male employees whose partners (whether marital or not) go to maternity hospitals, since lesbian couples do not have the right to joint parenthood (or the right to register their partnership). This therefore undoubtedly discriminates against non-married lesbian couples.

There is no case law on the issue.

4.6 Health and safety (Article 7(2) Directive 2000/78)

In Slovakia, there are exceptions in relation to disability and health and safety as allowed under Article 7(2) of the Employment Equality Directive.

Under Section 8(5) of the Anti-discrimination Act, objectively justified differential treatment grounded in specific health requirements in relation to access to a job or to performing certain activities in a particular job, do not constitute discrimination on the ground of disability, provided that this is required by the character of the job or job activity.

The Labour Code provides some extra protection to workers with disabilities, for example there are special conditions for employers when giving the notice to an employee with a health disability and in setting working times.²⁵⁸

There is no case law yet on the issue of health and safety exceptions related to disability.

There are no exceptions for grounds other than disability with regard to health and safety.

4.7 Exceptions related to discrimination on the ground of age (Article 6 Directive 2000/78)

4.7.1 Direct discrimination

In Slovakia, national law provides for specific exceptions for direct discrimination on age.

The exception for age is provided both within the framework of genuine and determining occupational requirements (Section 8(1) of the Anti-discrimination Act – see section 4.1 above) and under Section 8(3) of the Anti-discrimination Act, which allows for differential treatment on the ground of age, provided that objective justification exists and provided that other conditions are met (see below for further details).²⁵⁹

a) Justification of direct discrimination on the ground of age

In Slovakia, national law provides for justification for direct discrimination on the ground of age. The test as stipulated by the legislation (Section 8(3) of the Anti-discrimination Act – see below for more details) almost follows the wording of Article 6 of Directive 2000/78 and hence is compliant with the test in Article 6, Directive 2000/78 (and probably also with the CJEU case law – although there is still very limited case law that would interpret the Slovak legislative provisions).

²⁵⁷ See Slovakia, Labour Code, 311/2001, Section 141(2)(b).

²⁵⁸ Slovakia, Labour Code, 311/2001, Sections 66, 68 (3), 87(3), 158 and 159.

²⁵⁹ See, for example, Decision of District Court Banská Bystrica, No. 8C/119/2006 – 107, 20 November 2007 in conjunction with decision of Regional Court Banská Bystrica, No. 12 Co/6/08, 27 March 2008.

b) Permitted differences of treatment based on age

In Slovakia, national law permits differences of treatment based on age for any activities within the material scope of Directive 2000/78.

The exception for age is provided both within the framework of genuine and determining occupational requirements (Section 8(1) of the Anti-discrimination Act – see section 4.1 above) and under Section 8(3) of the Anti-discrimination Act. Section 8(3) of the Anti-discrimination Act reads as follows:

'differential treatment on the ground of age shall not be deemed to constitute discrimination if it is objectively justified by a legitimate aim and if it is necessary and appropriate for the achievement of that aim and if this is provided for by a specific legal regulation. Differences of treatment on grounds of age shall not be deemed to constitute discrimination if they consist of:

- fixing a minimum or maximum age as a recruitment criterion;
- setting special conditions for access to employment or vocational training, and special conditions for employment, including remuneration and dismissal, for persons of a certain age bracket or persons with caring responsibilities, where such special conditions are intended to promote work integration or protection of such persons;
- fixing minimum conditions of age, professional experience or seniority in service for access to employment or to certain advantages linked to employment.'

From the structure and content of the above-quoted provision, it is not quite clear whether each of the exceptions specified in the three points must, in a particular case, meet the general test of justification provided by the introductory sentence to Section 8(3) of the Anti-discrimination Act, or whether the introductory sentence simply provides a general context for the exceptions specified in the three points (and perhaps further in other pieces of legislation).

Depending on the character of the relevant legislation, and also depending on the (limited) judicial practice that has developed on the issue over the course of time (the courts have ruled on only one case on this matter, see below), it is more likely that the second approach (where the introductory sentence simply provides a general context for the exceptions specified in the three points) will apply under the current wording of Section 8(3) of the Anti-discrimination Act. For example, according to Section 5(1)(a) of Act 385/2000 on Judges and Lay Judges, only a citizen who has reached at least 30 years of age can be appointed as a judge. The provision is of a cogent nature and as such seems to offer no room for justification in the light of the introductory sentence of Section 8(3) of the Anti-discrimination Act (which, per se, does not necessarily mean that the transposition of the 2000/78 Directive is incorrect in this point).

An example confirming the interpretation outlined above is a judgment of the District Court Banská Bystrica of 20 November 2007²⁶⁰ (upheld by a judgment of the Regional Court Banská Bystrica of 27 March 2008),²⁶¹ where the claimant sued a potential employer for discrimination on the ground of age. The claimant was a 38-year-old unemployed man who saw a violation of the prohibition of discrimination in the publication of a job advertisement by the defendant in which the defendant sought to fill a vacancy for a technician. The condition for the technician job was that the applicant must be a 'disadvantaged job seeker under the age of 25'. This was in accordance with the defendant's contract with an office

²⁶⁰ District Court Banská Bystrica, No. 8C/119/2006 – 107, 20 November 2007.

²⁶¹ Regional Court Banská Bystrica, No. 12 Co/6/08, 27 March 2008. The court probably made a mistake in the official judgment as it states the date of issue of the judgment of the regional court as 27 March 2007. However, this would not have been possible as the district court issued its decision on 20 November 2007 and regional court decisions always follow district court ones.

of labour, social affairs and family (concluded under the Act on Employment Services) under which the defendant had committed to create four jobs for 'disadvantaged applicants' (i.e. for applicants under the age of 25 who have completed their training for an occupation through a daily form of study less than two years ago and have not yet acquired their first regularly paid job) and the labour office committed to grant non-returnable financial support to create these jobs. The claimant alleged that the age condition contained in the job advertisement was the only reason that had deterred him from applying for the job.

The court arrived at the decision that the defendant had not breached the Anti-discrimination Act. For the court, the fact that the defendant acted in accordance with a contract with a labour office (and hence also legislation providing for exceptions based on age) was in itself sufficient reason to state that 'the defendant has therefore pursued a legitimate aim and acted in accordance with special regulations' (i.e. the court did not question the nature of the legislatively provided exception as such).

It is also worth noting that, for example, Section 77(6) of Act 131/2002 on Higher Education stipulates that employment of university teachers terminates at the end of the academic year in which they reach 70 years of age, although extension of the employment relationship is possible for one year (even repeatedly, but with no details on the criteria for doing so). It is very likely that the provision is in violation of CJEU case law on exceptions relating to age (see sections 4.7.4(c) and (f) below for more details). In addition, the provision also has the potential to be indirectly discriminatory on the ground of sex/gender, as the apparently neutral provision may have a greater impact on women, mainly due to their generally lower positions in academic hierarchies.

There are other similar cases in the Slovak legal system where an employment relationship must or may be terminated on reaching the age of 65 (see section 4.7.3). Social partners, however, are not authorised by law to agree the age at which an employment contract must or can be terminated (so the decision of the CJEU in *Prigge*²⁶² is not applicable to Slovakia).

c) Fixing of ages for admission or entitlement to benefits of occupational pension schemes

In Slovakia, national law allows occupational pension schemes to fix ages for admission to the scheme or entitlement to benefits, taking up the possibility provided for by Article 6(2).

With regard to occupational social security schemes, differences of treatment in such schemes on grounds of age will not be considered as discrimination where they consist of fixing age limits for entitlement to old age pensions and disability pensions, including the fixing of different age limits in such schemes for employees or groups of employees, and the use of different calculation methods for these pensions based on age criteria, provided that this does not result in discrimination on the ground of sex.²⁶³ Also, under Section 8(6) of the Anti-discrimination Act, differences of treatment on grounds of age or disability in the provision of insurance services will not be deemed to constitute discrimination where such treatment results from different levels of risk, verifiable by statistical or similar data, and where the terms of insurance services adequately reflect such risk. Different treatment on the ground of age is permitted in areas regulating the service of members of the armed forces, armed security services, armed corps, the National Security Office, the Slovak Information Service, the Fire and Rescue Service, voluntary military training, training for the exercise of extraordinary service in the armed forces, and the exercise of tasks of armed forces by reservists who are categorised as active reservists.²⁶⁴

²⁶² CJEU, C-447/09 *Reinhard Prigge and Others v Deutsche Lufthansa AG*, judgment of 13 September 2011.

²⁶³ Slovakia, Anti-discrimination Act, 365/2004, Section 8(4).

²⁶⁴ Slovakia, Anti-discrimination Act, 365/2004, Sections 4(1)(b) and 4(1)(c).

4.7.2 Special conditions for young people, older workers and persons with caring responsibilities

In Slovakia, there are special conditions set by law for older and younger workers in order to promote their vocational integration, and for persons with caring responsibilities to ensure their protection.

According to Sections 171-173 of the Labour Code, an employer is obliged to create favourable conditions for the overall development of the physical and mental capabilities of young employees (the Labour Code uses the term 'juvenile employees'), including by adapting their working conditions. A young employee is, according to Section 40(3) of the Labour Code, defined as an employee under the age of 18. Any notice given to a young employee, or termination of employment with immediate effect on the employer's initiative, must be brought to the attention of the young employee's legal guardian. Employers may only assign young employees to jobs that are appropriate to their physical and mental development and do not jeopardise their morality. In addition, they must provide them with enhanced care at work.²⁶⁵

Sections 174-175 of the Labour Code stipulate the prohibition of night work and standby duty for young employees. Young employees over the age of 16 may exceptionally perform night work not exceeding one hour if it is necessary for their vocational training. The employer must not apply a system of wages and benefits that could endanger the health and safety of young employees, due to increased work performance. A young employee must not be assigned to work that is inadequate, dangerous or harmful to their health, due to their age-related, specific anatomical, physiological and psychological features. Lists of the kinds of work and workplaces forbidden for young employees are set out by a government regulation.²⁶⁶

Specific protective measures contained in the Labour Code apply to the prohibition of the immediate dismissal of an employee on maternity or parental leave, a solitary employee²⁶⁷ responsible for caring for a child under the age of three or an employee who personally cares for a relative or other close person with a severe disability (Section 68(3)).

For an employee with a disability, a pregnant woman, a woman or man permanently caring for a child under three or a solitary employee who permanently cares for a child under 15, irregular working time may only be arranged upon agreement with them (Section 87(3)) - note the absence of this benefit in relation to employees who personally care for relatives or other close persons with a severe disability.

The employer is obliged to excuse the absence from work of an employee for periods of maternity leave and parental leave, periods for attending to a sick family member and periods for caring for a child under the age of 10 who, for substantive reasons, may not be in the care of a children's educational facility or school which the child is otherwise in the care of (Section 141(1)). When designating employees to work shifts, the employer is obliged to take into account the needs of pregnant women and of women and men caring permanently for children.

If a pregnant woman, or a man or a woman caring permanently for a child under the age of 15 requests a reduction in working hours or other change to the fixed weekly working

²⁶⁵ Slovakia, Labour Code, 311/2001, Sections 172 and 173.

²⁶⁶ Government Regulation No 286/2004 regulating the list of work and workplaces forbidden for juvenile employees and setting certain duties of employers regarding the employment of juvenile employees (*nariadenie vlády č. 286/2004 Z.z., ktorým sa ustanovuje zoznam prác a pracovísk, ktoré sú zakázané mladistvým zamestnancom, a ktorým sa ustanovujú niektoré povinnosti zamestnávateľom pri zamestnávaní mladistvých zamestnancov*).

²⁶⁷ Under the Labour Code, a solitary employee is understood as an 'employee who lives alone and is a single, widowed or divorced man or a single, widowed or divorced woman' (Section 40(1)) or a 'solitary man or a woman for other substantive reasons' (Section 40(2)).

hours, the employer is obliged to accommodate their request, if this is not prevented for substantive operational reasons (Section 164(2)). This provision also applies to an employee who personally cares permanently for a relative or other close person who is mostly or completely helpless and who is not provided with care in social care facilities or institutional care in healthcare facilities (Section 165).

The Employment Services Act expressly defines employment services as well as the implementation of active measures within the labour market. Among others, the act provides specific support to the category of 'disadvantaged job seekers'. This category comprises, inter alia, solitary citizens living with one or more persons who are reliant on them or caring for at least one child still attending school, people over the age of 50 and people under 26 who have completed their training for an occupation through a daily form of study less than two years ago and have not acquired their first regularly paid job after completing the training.²⁶⁸

In accordance with this act, the Government may provide a job seeker under the age of 26 who has completed secondary school or university studies, with a 'practical training allowance' aimed at widening the opportunities for this person to find a job within the labour market. The practical training is carried out in the workplace of a particular employer and corresponds to the level of education attained for a period of no less than three months and no more than six months. During the practical training the young trainee receives a state-funded monthly allowance of the subsistence amount for one adult person set by a special regulation (EUR 133.29 as of July 2018).²⁶⁹

The act also introduced a 'subsidy for the employment of a disadvantaged job seeker'.²⁷⁰ An employer who creates a new job and employs a 'disadvantaged job seeker' is entitled to a subsidy of up to 40 % (depending on the region) of the monthly cost of labour of one employee, calculated on the basis of the average wage of an employee in the national economy.

4.7.3 Minimum and maximum age requirements

In Slovakia, there are exceptions permitting minimum and/or maximum age requirements in relation to access to employment (notably in the public sector) and training.

General rules for the justification of direct discrimination in employment on the ground of minimum or maximum age requirements are set in Section 8(3)(a) of the Anti-discrimination Act (see section 4.7.1 above).

There are several laws stipulating minimum or maximum ages in employment relationships. None of the laws have been subject to specific public discussion or judicial review as to whether they are compatible with Directive 2000/78.

The Constitution of the Slovak Republic regulates the requirements applicable to the holders of high public office, including their age. This applies to the President of the State, for whom a minimum age of 40 has been set, to judges, judges of the Constitutional Court, the ombudsperson and members of Parliament (the National Council of the Slovak Republic).²⁷¹

²⁶⁸ Slovakia, Employment Services Act, 5/2004, Section 8.

²⁶⁹ Slovakia, Employment Services Act, 5/2004, Section 51.

²⁷⁰ Slovakia, Employment Services Act, 5/2004, Section 50.

²⁷¹ Constitution of the Slovak Republic, Articles 74, 103, 134, 145 and 151a of the.

Other laws regulate, for example, the minimum age for: a work assistant for a person with a disability (18 years);²⁷² a prosecutor (25 years);²⁷³ the general prosecutor (40 years);²⁷⁴ and judges (30 years – see also section 4.7.1 above).²⁷⁵ The President may, upon a recommendation of the Judicial Council, withdraw a judge who has reached the age of 65.²⁷⁶ Seventy is the maximum age limit for a university teacher to be in an employment relationship with a university (although extensions are allowed – see section 4.7.1 above). The Labour Code stipulates a minimum age of 15 for a natural person to be subject to the rights and duties of an employee. However, the employer must not agree upon a starting day for work before the applicant has completed compulsory school education.²⁷⁷ Civil servants must be at least 18 years old. The law also stipulates a minimum age for obtaining a permit to run a business (18 years).²⁷⁸

Although the law does not say anything about age requirements for training connected to some of the professions described above, it follows logically that if training is designed for people in these professions only, then *de facto* age limits apply with regard to training as well.

In accordance with the Employment Services Act, the Government may provide a job seeker under the age of 26 who has completed secondary school or university studies with a 'practical training allowance', aimed at widening the opportunities for this person to find a job within the labour market.²⁷⁹

4.7.4 Retirement

a) State pension age

In Slovakia, there is a state pension age, at which individuals are entitled (but not obliged) to collect their state pensions.

If an individual wish to work longer, she or he can collect a pension and still work (however, this does not fully apply to early pensions). Therefore, although a pension can be deferred in principle, if an individual wish to work longer (since no-one can be compelled to collect their pension), pensions are not deferred in practice because receiving income from a wage or salary and a pension simultaneously is allowed.

The age of entitlement to a state pension is fixed by law. Under the Social Insurance Act,²⁸⁰ the pensionable age is fixed at the age of 62 years for both men and women. However, this provision is not fully implemented yet, due to changes in the retirement security scheme that were introduced in 2004 by transitional provisions in the Social Insurance Act that set the retirement ages progressively (and differently for men and women), starting at 60 years for men and 53 to 57 years for women (depending on the number of children the woman has had).²⁸¹

Pensionable age and collection of a pension does not prevent someone from working if they wish to continue their employment or start a new one. Thus, a person entitled to a

²⁷² Slovakia, Employment Services Act, 5/2004, Section 59(3).

²⁷³ Slovakia, Act No 154/2001 on Prosecutors and Prosecutor Candidates, as amended (*zákon č. 154/2001 Z. z. o prokurátoroch a právnych čakateloch prokuratúry v znení neskorších predpisov*), Section 6.

²⁷⁴ Slovakia, Act No. 153/2001 on Prosecution, as amended (*zákon č. 153/2001 Z. z. o prokuratúre v znení neskorších predpisov*), Section 7(3).

²⁷⁵ Slovakia, Act No 385/2000 on Judges and Lay Judges and on amending and supplementing certain acts, as amended (*zákon č. 385/2000 Z. z. o sudcoch a prísediacich a o zmene a doplnení niektorých zákonov v znení neskorších predpisov*), Section 11.

²⁷⁶ Constitution of the Slovak Republic, Article 147(2)(b).

²⁷⁷ Slovakia, Labour Code, 311/2001, Section 11.

²⁷⁸ Slovakia, Small Business Act, 455/1991, Section 6.

²⁷⁹ Slovakia, Employment Services Act, 5/2004, Section 51.

²⁸⁰ Slovakia, Social Insurance Act, 461/2003.

²⁸¹ Slovakia, Social Insurance Act, 461/2003, Section 65.

state pension can work and collect their old age pension from the social security scheme and a wage from their employer.

In special circumstances an individual can start to collect their pension early.²⁸² As of January 2013, the simultaneous collection of an early pension and a wage or salary (including payments for services carried out by people who are self-employed) that is subject to compulsory pension insurance, is no longer possible, with some minor exceptions (for example, simultaneous collection of an early pension and of a salary is possible if the sum of the monthly income of the person concerned received from her employment or public service does not exceed 67 % of the average monthly wage in the national economy in a year preceding, by two years, the year in which the person concerned started the employment or public service in question).²⁸³

There is no case law on any of these issues yet.

b) Occupational pension schemes

In Slovakia, there is a normal age when people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements.

An individual can collect an occupational ('supplementary') pension and still work, unless she or he collects an early occupational pension, which excludes the option to work (apart from some minor exceptions – see section 4.7.4(a) above). Therefore, although a payment from an occupational pension scheme can be deferred in principle, if an individual wishes to work longer (since no-one can be compelled to collect their occupational pension), these payments are not deferred in practice because gaining income from a wage or salary and an occupational pension scheme simultaneously is allowed.

Occupational pension schemes and their corresponding entitlements do not represent the main and compulsory source of pensionable income (this role is fulfilled by the state social security scheme) but are a supplementary source of income based on a voluntary agreement between employers and employees. For this reason, an individual can collect a pension and still work.

The functioning of the occupational social security schemes in Slovakia is regulated by Act 650/2004 on Supplementary Pension Saving.²⁸⁴

Under Section 16(1) of the Act on Supplementary Pension Saving, a participant in this supplementary pension saving scheme who asks to receive payments from a supplementary pension can receive a supplementary pension in the event that they become entitled to receive old age pension under the Social Insurance Act (see section 4.7.4(a) above), in the event that they become entitled to receive an early pension according to Section 67 of the Social Insurance Act (see section 4.7.4(a) above), or when they reach 62 years of age. An individual who collects an early pension, and hence is entitled to a supplementary pension, cannot work and at the same time collect a supplementary pension (apart from some minor exceptions), because supplementary pension entitlement is conditioned upon early pension entitlement, and an early pension entitlement is conditioned upon the person concerned not working.

²⁸² Slovakia, Social Insurance Act, 461/2003, Section 67. The general conditions are that an individual was insured for at least 15 years, that she or he is supposed to reach the regular statutory pensionable age in no more than two years, and that the sum of the early pension she or he would acquire is no less than 1.2 times the 'living minimum' per one adult person as stipulated by a special law.

²⁸³ See Slovakia, Social Insurance Act, 461/2003, Section 67(4), in conjunction with Section 4(1)(d).

²⁸⁴ Slovakia, Act No 650/2004 on Supplementary Pension Saving and on amending and supplementing certain laws, as amended (*zákon č. 650/2004 Z. z. o doplnkovom dôchodkovom sporení a o zmene a doplnení niektorých zákonov v znení neskorších predpisov*), see Section 2(2).

c) State imposed mandatory retirement ages

In Slovakia, there is no state-imposed mandatory retirement age. However, with respect to some professions in the field of public service, some *de facto* exceptions apply.

A *de facto* state-imposed mandatory age for retirement is stipulated by Section 77(6) of Act 131/2002 on Higher Education, which stipulates that employment of university teachers terminates at the end of the academic year in which they reach the age of 70. Although this provision allows the employment relationship of university teachers who are over 70 to be extended for one year (even repeatedly, but with no details on the criteria for doing so), a university teacher whose contract is not extended has practically no option other than to retire (see section 4.7.3 above for more details).

A state-imposed mandatory retirement age can, in certain circumstances, also apply to judges. Although there is no mandatory retirement age for judges, the President can, upon a proposal from the Judicial Council, remove a judge from office if they have reached the age of 65. It is unclear from the law whether the Judicial Council is obliged to propose to the President the removal from office of every judge who reaches the age of 65. There are no criteria in the Constitution or in law for the President to follow when deciding whether to remove from office a judge who has reached the age of 65.²⁸⁵

A similar situation emerges with prosecutors. The Prosecutor General can, in accordance with Section 15(3)(b) of Act 154/2001 on Prosecutors and Legal Trainees of the Prosecutor's Office, remove a prosecutor from office if they have reached the age of 65. The law does not stipulate any further conditions for the Prosecutor General to decide whether or not to remove the prosecutor concerned from office.²⁸⁶

There are otherwise no state-imposed mandatory retirement ages.

There is no case law on the issue.

d) Retirement ages imposed by employers

In Slovakia, national law does not permit employers to set retirement ages (or ages at which the termination of an employment contract is possible) by contract, collective bargaining or unilaterally.

e) Employment rights applicable to all workers irrespective of age

The law on protection against dismissal and other laws protecting employment rights apply to all workers irrespective of age, if they remain in employment after attaining pensionable age or another age.

An employer may not therefore terminate a contract after an employee attains pensionable age on the ground of age alone. This means that anyone can continue in employment so long as they enjoy sufficient capacity (except for the age limitations mentioned above and in section 4.7.3, the limitations connected to early pensions – see section 4.7.4(a) and, of course, except for cases such as incompetence or misconduct, which are generally legally accepted grounds for job termination by an employer). Thus, the state pensionable ('retirement') age stipulated by Slovak legislation simply refers to pension entitlement that a worker can collect while still working.

²⁸⁵ See: Constitution of the Slovak Republic, Article 147(2)(b) and Slovakia, Act on Judges and Lay-Judges, 385/2000, Section 18(2)(b) and Section 18(3).

²⁸⁶ See Slovakia, Act on Prosecutors And Prosecutor Candidates, 154/2001, Sections 14-17 for more detailed information.

The Anti-discrimination Act explicitly states that objectively justified differences of treatment on the ground of sex where they consist of fixing different retirement ages for men and women are not considered to be discriminatory.²⁸⁷

f) Compliance of national law with CJEU case law

In Slovakia, national legislation listed in section 4.7.4(c) above, which provides de facto mandatory retirement for some professions is not in line with the CJEU case law on age regarding mandatory retirement.

In the case of all the occupations listed in section 4.7.4(c) (university teachers, judges, prosecutors), the law might be following a legitimate aim (quality of performance of public service, generational balance etc.). However, it does not require that the person affected by the compulsory dismissal be entitled to an old-age pension, which is in conflict with CJEU case law on age regarding compulsory retirement (e.g. *Palacios de la Villa*).²⁸⁸ In addition, the conditions for non-renewal of a labour contract (in the case of university teachers) or for removing a judge or prosecutor from office, are arbitrary and non-transparent, which certainly does not meet the requirement for reasonableness of the measures in question and the condition for proportionality of the means used.

4.7.5 Redundancy

a) Age and seniority taken into account for redundancy selection

In Slovakia, national law does not permit age or seniority to be taken into account in selecting workers for redundancy.

b) Age taken into account for redundancy compensation

In Slovakia, national law provides compensation for redundancy. Such compensation is not directly affected by the age of the worker.

In principle, the redundancy payment does not depend on the age of the employee concerned. However, as the calculations of the redundancy payment depend on the length of employment with a particular employer, the age of the worker can indirectly influence the sum of the redundancy payment (the longer the employment relationship, the higher the redundancy payment).²⁸⁹

4.8 Public security, public order, criminal offences, protection of health, protection of the rights and freedoms of others (Article 2(5), Directive 2000/78)

In Slovakia, national law does not include exceptions that seek to rely on Article 2(5) of the Employment Equality Directive.

4.9 Any other exceptions

In Slovakia, other exceptions to the prohibition of discrimination provided in national law are the following:

According to Section 8(4) of the Anti-discrimination Act:

‘differential treatment in occupational pension systems based on age shall not be deemed to constitute discrimination if it consists in the fixing of different age limits for entitlement to old age pension and disability pension in such systems, if it consists

²⁸⁷ Slovakia, Anti-discrimination Act, 365/2004, Section 8(7)(a).

²⁸⁸ CJEU, C-411/05 *Félix Palacios de la Villa v. Cortefiel Servicios SA*, judgment of 16 October 2007.

²⁸⁹ Slovakia, Labour Code, 311/2001, Section 76.

in the fixing of different age limits in such schemes for [different]²⁹⁰ employees or groups of employees, and if it consists in using different ways of calculation of these pensions that are based on the criterion of age, provided that these calculations are not simultaneously discriminatory on the ground of sex.'

According to Section 8(5) of the Anti-discrimination Act:

'objectively justified differential treatment based on specific health requirements in relation to application for a job or performing certain activities in a particular job shall not be deemed to constitute discrimination on the ground of disability, provided that this treatment is required by the nature of the job or of the job activity.'

Section 8a of the Anti-discrimination Act is an enabling provision for the use of 'temporary equalising measures' - positive action measures – (see section 5 below for more details).

Section 166 of the Labour Code obliges an employer to extend an employee's parental leave, upon their request, to an overall duration of up to six years if they care for a child with a long-term unfavourable state of health (as compared to parental leave of a maximum duration of three years provided to employees caring for a child without a long-term unfavourable state of health).

People with disabilities enjoy special protection against dismissal: a person with a disability can only be given notice after prior endorsement from the labour office responsible.²⁹¹

²⁹⁰ The provision of Section 8(4) of the Anti-discrimination Act is very unclear as to what categories of 'employees' and 'groups of employees' it has in mind when stipulating this exception.

²⁹¹ Slovakia, Labour Code, 311/2001, Section 66. However, the endorsement requirement does not apply in the case of employees with disabilities who have attained pensionable age.

5 POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78)

a) Scope for positive action measures

In Slovakia, positive action is permitted in national law in respect of racial or ethnic origin, disability and age. Positive action in respect of religion or belief and sexual orientation is not permitted in national law.

The ability to adopt positive action measures (known as 'temporary equalising measures') is provided for by the Slovak Constitution as well as the Anti-Discrimination Act.

Section 38(2) of the Slovak Constitution stipulates that minors and disabled persons shall enjoy special protection in employment relations and special assistance in training.²⁹²

Section 8a of the Anti-discrimination Act²⁹³ stipulates that the

'adoption of temporary equalising measures by public administration bodies or other legal entities that are aimed at removing disadvantages following from the ground of racial or ethnic origin, affiliation with a national minority or an ethnic group, gender or sex, age or disability, the aim of which is to guarantee equality of opportunities in practice, is not deemed to be discrimination.'²⁹⁴

The Anti-discrimination Act lists the possible temporary equalising measures in a non-exhaustive list, including measures:

- a) 'aimed at removing social or economic disadvantage that disproportionately affects representatives of disadvantaged groups;
- b) consisting of supporting the interests of representatives of the disadvantaged groups in employment, education, culture, healthcare and services;
- c) aimed at generating equality in access to employment, education, healthcare and housing, mainly through targeted training programmes for representatives of the disadvantaged groups or through the dissemination of information about these programmes or through opportunities to apply for jobs or places in the education system.'²⁹⁵

The temporary equalising measures can only be adopted if there is 'provable inequality', if their aim is reducing or removing this inequality and if they are appropriate and necessary to achieve the set aim.²⁹⁶ The temporary equalising measures can only be adopted in the fields falling under the material scope of the Anti-discrimination Act²⁹⁷ (employment and occupation, social security and social advantages, healthcare, education and access to and provision of goods and services including housing).²⁹⁸ They can only be in force while the inequality that has led to their adoption exists. Otherwise the bodies that have adopted such measures are obliged to end them.²⁹⁹

The ability to adopt positive action measures is further provided for in specific legal provisions in the areas of employment³⁰⁰ and education.³⁰¹

²⁹² Constitution of the Slovak Republic No. 460/1992, Section 38.

²⁹³ This provision gained its current shape after an amendment of the Anti-discrimination Act by Act No 32/2013 of 5 February 2013, effective from 1 April 2013.

²⁹⁴ Slovakia, Anti-discrimination Act, 365/2004, Section 8a(1).

²⁹⁵ Slovakia, Anti-discrimination Act, 365/2004, Section 8a(1).

²⁹⁶ Slovakia, Anti-discrimination Act, 365/2004, Section 8a(2).

²⁹⁷ Slovakia, Anti-discrimination Act, 365/2004, Section 8a(3).

²⁹⁸ Slovakia, Anti-discrimination Act, 365/2004, Sections 3(1), 6 and 5.

²⁹⁹ Slovakia, Anti-discrimination Act, 365/2004, Section 8a(3).

³⁰⁰ Slovakia, Labour Code No. 311/2001, Section 66, Act No. 5/2004 on Employment Services, Sections 63–65.

³⁰¹ Slovakia, Act No. 245/2008 on Education (Schools Act), Sections 19(4) and 60(4).

Bodies that adopt the measures are obliged to monitor and evaluate them continuously and to publish information about them with a view to reappraising their further duration, and must provide the relevant information to the Slovak National Centre for Human Rights (the equality body).³⁰² In 2018, the centre received information about the adoption of only one temporary equalising measure, which concerned a municipality project for improving the access of the local marginalised Roma community to employment and housing. In addition, the centre analysed and consulted with the Office of the Plenipotentiary of the Slovak Government for Roma Communities on the introduction of a measure based on preferential treatment of people of Roma ethnic origin for work as teachers in preschool education.³⁰³

According to the research by the Slovak National Centre for Human Rights from 2016 concerning the adoption of temporary equalising measures, 8.93 % of the bodies that are entitled to adopt such measures that were questioned (the sample was 1 198 bodies), informed the centre that they were adopting or have adopted temporary equalising measures in the past. Out of those questioned, as many as 55.18 % reported that they were not aware of the term 'temporary equalising measures' at all.³⁰⁴

Positive action measures were subject to Constitutional Court review in 2004-2005, upon the adoption of the Anti-discrimination Act in 2004.

In 2005, the Constitutional Court decided that the former Section 8(8) of the Anti-discrimination Act was not in compliance with the Constitution.³⁰⁵

The Constitutional Court did not reject the application of the specific equalising measures (positive action) in principle. However, it stated that taking such action must have a constitutional basis, which is not the case when speaking about racial and ethnic origin. It seems from the current wording of Section 8a of the Anti-discrimination Act, which provides for the adoption of temporary equalising measures, that the Constitutional Court decision was simply 'overruled' by legislators with regard to racial or ethnic origin, affiliation with a national minority or an ethnic group, and age being the eligible grounds for positive action (since they are not covered by Article 38 of the Constitution), and in principle also with all other grounds contained in the provision, since Article 38 of the Constitution only covers health protection at work and working conditions (and the material scope of the positive action as regulated by the Anti-discrimination Act currently covers all fields that fall under the scope of Anti-discrimination Act). However, no-one contests the current wording of Section 8a of the Anti-discrimination Act and the Constitutional Court decision used to be a subject of constant criticism for its inconsistency and illegitimacy.

In autumn 2013, the Centre for the Research of Ethnicity and Culture (an NGO based in Slovakia) in cooperation with the Ministry of Justice initiated the formation of a working group composed of various representatives of governmental bodies, the Slovak National Centre for Human Rights and NGOs. The work of this group resulted in written guidelines for the implementation of temporary equalising measures with regard to ethnicity, nationality (*národnosť*), and sex or gender.³⁰⁶

³⁰² Slovakia, Anti-discrimination Act, 365/2004, Section 8a(4).

³⁰³ Response of the Centre of 8 March 2019 to a request for information of 5 March 2019 (on file with the author).

³⁰⁴ See Slovak National Centre for Human Rights (2016), *Monitorovanie a vyhodnocovanie účinnosti dočasných vyrovnávacích opatrení v podmienkach Slovenskej republiky* (Monitoring and Evaluation of the effectiveness of temporary equalising measures in Slovakia 2016), available at: http://www.snslp.sk/CCMS/files/DVO_Vyskum_FINAL.pdf.

³⁰⁵ Decision of the Constitutional Court, PL. ÚS 8/04, 18 October 2005, <http://www.concourt.sk/>.

³⁰⁶ Lajčáková, J. (2015) *Prijímanie dočasných vyrovnávacích opatrení na základe etnicity, národnosti, pohlavia alebo rodu na Slovensku: PRÍRUČKA* (Adopting Temporary Equalising Measures with Regard to Ethnicity, Nationality, Sex or Gender in Slovakia: GUIDELINES), Centrum pre výskum etnicity a kultúry, available at <http://cvek.sk/publikacie/>.

The current Government action plan on the prevention of all forms of discrimination 2016 - 2019 recognises that positive action measures have been implemented in Slovakia only very rarely, without expert advice and without proper evidence.³⁰⁷

b) Quotas in employment for people with disabilities

In Slovakia, national law provides for quotas for people with disabilities in employment.

There is a special quota system established for employers who employ at least 20 employees. Under Sections 63-65 of the Employment Services Act, any employer who employs at least 20 employees³⁰⁸ is obliged to ensure that at least 3.2 % of their workforce is made up of people with disabilities, provided that the local labour office has job seekers with disabilities on its register. Instead of employing a person with a disability, an employer can also decide to buy goods or services from a sheltered workshop or a sheltered workplace or a self-employed person with a disability. If an employer fails to meet both of these obligations, they are obliged to pay a levy to the labour office. The levy is public revenue and is not redistributed further (ie. to support the employment of people with disabilities). According to the recent statistics on this special quota, covering the year 2017: 8 045 employers met their legal obligation in this regard by ensuring that at least 3.2 % of their workforce is made up of people with disabilities; 1 521 employers met the obligation by buying goods or services from a sheltered workshop or a sheltered workplace or a self-employed person with a disability; 707 employers met the obligation by paying a levy to the labour office; and 1 328 employers met the obligation by combining the options.³⁰⁹ The percentage of employers meeting the legal obligation by ensuring that at least 3.2 % of their workforce is made up of people with disabilities accounts for approximately 70 %, which is slightly less than in the previous year, 2016, when it was approximately 75 %. The statistics for 2018 are not yet publicly available.

³⁰⁷ *Akčný plán predchádzania všetkým formám diskriminácie na roky 2016-2019*, available at: http://www.gender.gov.sk/diskriminacia/files/2016/09/AP_ADZ-.pdf.

³⁰⁸ Excluding some categories of employees such as members of the police, prison guards, firefighters etc.

³⁰⁹ Response of the Central Office of Labour, Social Affairs and Family of 6 March 2019 to a request for information of 4 March 2019 (on file with the author). The statistics were provided on demand and are not available online.

6 REMEDIES AND ENFORCEMENT

6.1 Judicial and/or administrative procedures (Article 7 Directive 2000/43, Article 9 Directive 2000/78)

- a) Available procedures for enforcing the principle of equal treatment

In Slovakia, the following procedures exist for enforcing the principle of equal treatment: judicial, administrative, alternative dispute resolution (in the form of mediation), and internal complaint procedures (mainly in workplaces).

There are no different procedures for employment in the private and the public sectors.

- Civil judicial procedures

Under the Anti-discrimination Act, a natural person and/or legal entity who consider(s) themselves wronged in relation to their rights and interests protected by law because the principle of equal treatment has not been applied to them, may pursue their claim through judicial proceeding before the civil court of the first instance (there are no special labour courts in Slovakia). Persons discriminated against have the right to sue the perpetrator – be it a natural person or a legal entity, a public or private body – and request a number of remedies, including (the list is not exhaustive) that they be made to refrain from such conduct and, where possible, rectify the illegal situation or provide adequate satisfaction. If the adequate satisfaction is insufficient – generally if the violation of the principle of equal treatment has considerably impaired the dignity, social status or social achievement of the victim – they may also seek non-pecuniary damages in cash. The amount of the non-pecuniary damages is determined by the court, which must take into account the seriousness of the non-pecuniary damage and all underlying circumstances. Material damages resulting from such treatment may also be claimed.³¹⁰ There is no difference in the procedure, whether a public or private entity is being sued. The procedure has legally binding rules and the outcome is also legally binding.

Civil judicial proceedings under the Anti-discrimination Act follow the Civil Dispute Act,³¹¹ which contains some special provisions on anti-discrimination proceedings. The act is a general civil dispute procedural code, with deviations for, among other things, proceedings concerning alleged violations of the principle of equal treatment. The act introduces the concept of 'Disputes with Protection of a Weaker Party,' where it departs from some of the general rules contained in the act, with the aim of mitigating the power imbalance between the parties to such proceedings. Consumer disputes, anti-discrimination disputes and individual labour disputes (including disputes connected to violations of the principle of equal treatment)³¹² are the three types of disputes that incur protection of a weaker party.³¹³ In the regulation of anti-discrimination disputes,³¹⁴ the act refers to anti-discrimination legislation (in practice mainly the Anti-Discrimination Act),³¹⁵ and stipulates that the procedural provisions contained in anti-discrimination legislation (e.g. on the burden of proof) take precedence over the Civil Dispute Act.³¹⁶ Among the exemptions from the general procedural rules contained in the act that apply to anti-discrimination disputes are: a broader duty of the court to instruct the complainants on their rights;³¹⁷ the ability of the court to seek evidence on its own initiative;³¹⁸ the right of the complainant to submit evidence until the decision on the merits is delivered (as compared to other

³¹⁰ Slovakia, Anti-discrimination Act, 365/2004, Section 9.

³¹¹ Slovakia, Civil Dispute Act, 160/2015.

³¹² Slovakia, Civil Dispute Act, 160/2015, Section 316(2).

³¹³ Slovakia, Civil Dispute Act, 160/2015, Sections 290-323.

³¹⁴ Slovakia, Civil Dispute Act, 160/2015, Sections 307-315.

³¹⁵ Slovakia, Civil Dispute Act, 160/2015, Section 307.

³¹⁶ Slovakia, Civil Dispute Act, 160/2015, Section 315(2).

³¹⁷ Slovakia, Civil Dispute Act, 160/2015, Section 309.

³¹⁸ Slovakia, Civil Dispute Act, 160/2015, Section 311.

proceedings where the period for submitting evidence is shorter);³¹⁹ and the duty of courts to conduct hearings in all anti-discrimination proceedings (except for when the complainant agrees to omitting the hearing).³²⁰ The act also introduces a provision entitling NGOs and the Slovak National Centre for Human Rights to represent complainants when referring an extraordinary appeal to the Supreme Court (in disputes concerning violations of the principle of equal treatment).³²¹

- Administrative procedures

Since all public authorities are obliged to follow the principle of equal treatment, either pursuant to the Anti-discrimination Act (if the scope of their activities falls under the material scope of the act), or pursuant to the Constitution (or both), they are all subject to administrative complaint proceedings. There is a special act on administrative complaint proceedings that deals with complaints against unlawful conduct by public authorities (discrimination falls under such conduct).³²² Some public bodies have special complaint mechanisms, which are regulated by laws. Generally speaking, the outcomes of these procedures are binding, but they are not legally bindings for courts. Furthermore, the facts stated in documents issued by public bodies within their powers and public documents are considered to be truthful, if the opposite has not been proved to be the case.³²³

In some instances when public bodies/institutions are obliged to observe the principle of equal treatment (such as a school, the State Social Insurance Company), decisions taken by these institutions (e.g. negative decisions on admission to a school or granting of a social insurance benefit) are subject to special administrative rules, and the decisions themselves are subject to appeal, either by administrative bodies, or by courts. If the appeal procedures are carried out by administrative bodies, the appellate decisions are usually subject to judicial review. All decisions are, generally speaking, binding.

In some fields (e.g. employment, provision of goods and services), the performance of entities operating in these fields (employers, service providers, etc.) are subject to supervision through inspections. The inspections follow a type of administrative procedure. However, no shift of the burden of proof applies to inspection legislation and moreover, in most cases there is a lack of effective methodology for identifying discrimination (see section 6.3 of this report for more information).

In recent years, the Slovak Trade Inspectorate has made certain progress in effectively resolving complaints concerning discrimination. In some cases of discrimination against Roma in access to services, the Trade Inspectorate even used situation testing to uncover discrimination, in cooperation with the NGO, the Centre for Civil and Human Rights, which has experience in conducting situation testing. According to the statistics provided, in 2018, the Slovak Trade Inspectorate received 12 complaints concerning discrimination out of which three were justified and the Inspectorate found violation of the law based on the checks it conducted. The administrative proceedings in these cases are pending.

On sanctions, in 2017, in at least two cases, the Trade Inspectorate identified racial discrimination against Roma in access to services and imposed fines of EUR 1 000 and EUR 1 200.³²⁴ Arguably, the amount of the fines for discrimination remains low and may not have a sufficient deterrent effect (for more details see also section 2.2.1. on situation testing).

³¹⁹ Slovakia, Civil Dispute Act, 160/2015, Section 312.

³²⁰ Slovakia, Civil Dispute Act, 160/2015, Section 314.

³²¹ Slovakia, Civil Dispute Act, 160/2015, Section 429(2)(b).

³²² Slovakia, Act No 9/2010 on Complaints (*zákon č. 9/2010 Z. z. o sťažnostiach*). Complaints against a public body are usually dealt with by a higher public authority. The complaint should be processed within 60 days.

³²³ Slovakia, Civil Dispute Act, Sections 193 and 205.

³²⁴ Response of the Slovak Trade Inspectorate of 13 March 2019 to a request for information of 3 March 2019 (on file with the author).

In 2018, the National Labour Inspectorate received 220 complaints concerning discrimination in employment, out of which 68 complaints were found to be justified as a result of the checks conducted. However, these figures are only approximate. Complaints concerning discrimination usually raise other labour law violations that are checked simultaneously with the initial discrimination complaint and the inspectorate does not separately document how many complaints were found to be justified specifically due to discrimination being identified. The National Labour Inspectorate does not document statistics concerning grounds of identified discrimination and the sanctions imposed specifically for discrimination.³²⁵

The decisions of inspectorates are binding and are subject to judicial review.

- Internal complaint mechanisms

Section 13(5) of the Labour Code sets out the right of employees to submit a complaint to their employer against the infringement of the principle of equal treatment. The employer is obliged to respond to such a complaint without undue delay, provide redress, abstain from such conduct and eliminate the consequences thereof. The importance of this provision is in setting the obligation of a private employer to deal with complaints of discrimination in employment relationships. The procedure is binding for the employer (if he or she receives such a complaint) but not for outside entities, including state bodies. The effect of this particular remedy is questionable; it is not much used in practice, and when it is used, it is often not to the benefit but to the detriment of the person discriminated against.

- Mediation

The Anti-discrimination Act makes explicit reference to the right of people suffering breaches of the principle of equal treatment to mediation.³²⁶ The process of mediation is regulated by the Act on Mediation,³²⁷ which does not cover discrimination-specific mediation. Although the possibility of mediation undoubtedly extends (at least theoretically) the scope of remedial options for victims of discrimination, it is highly questionable whether the concept is suitable for some types of discrimination or cases of discriminatory behaviour (mainly harassment and sexual harassment, but also any kind of intentional discrimination) and whether it might not, in some cases, perpetuate the inequality. The mediation agreement is binding for the parties to the mediation.³²⁸ If the agreement is written in the form of notary minutes or approved by a court, it is also legally enforceable.³²⁹

- Criminal proceedings

Some of the gravest violations of the principle of equal treatment also constitute crimes (Criminal Code, Sections 421–425). Criminal convictions and subsequent criminal proceedings can only be initiated by the state. The judgments of criminal courts are legally binding.

³²⁵ Response of the National Labour Inspectorate of 12 March 2019 to a request for information of 4 March 2019 (on file with the author).

³²⁶ Slovakia, Anti-discrimination Act, 365/2004, Section 9(5).

³²⁷ Slovakia, Act No 420/2004 on Mediation and supplementing certain acts (*zákon č. 420/2004 Z. z. o mediácii a o doplnení niektorých zákonov*).

³²⁸ Slovakia, Mediation Act, 420/2004, Section 15(1).

³²⁹ Slovakia, Mediation Act, 420/2004, Section 15(2).

b) Barriers and other deterrents faced by litigants seeking redress

Claiming invalidity of an employment termination can only be done within a period of two months from the due date of the termination of the employment relationship.³³⁰ This is certainly a barrier to seeking effective remedies in cases of discriminatory dismissals.

There is also case law indicating that claiming financial compensation for non-pecuniary damage in civil law disputes can be subject to a three-year lapse period.³³¹

Another potential barrier to initiating anti-discrimination judicial proceedings may be the court fees, especially when seeking non-pecuniary damages in cash. This fee derives from the amount requested (3 %) and is always paid in addition to the judicial fees for the other claims made, and, in the author's view, is a barrier to seeking amounts that would really be effective, proportionate and dissuasive.

Socially disadvantaged applicants can be exempted from payment of court fees on the decision of the judge. However, the criteria for exempting a claimant from judicial fees are not fixed: the relevant provision states that an 'exemption can be granted if the situation of the party to the proceeding justifies it'.³³²

In practice, the physical accessibility of courts is not guaranteed for people with disabilities, particularly in old court buildings. Newly constructed or reconstructed court buildings, as well as all other public buildings, must be accessible for people with disabilities. Information provided in Braille script is mandatory only for the service panels in lifts.

There is also a lack of qualified legal assistance in the field of anti-discrimination (as well as a lack of accessible legal aid in general, in terms of financial accessibility). Access to free legal representation for those whose income is very low is provided by the state,³³³ although this legal representation can only be provided in civil judicial proceedings (including proceedings in the field of employment and including judicial review of administrative decisions) and not in administrative proceedings/proceedings before inspectorates, or criminal proceedings.³³⁴ The threshold for entitlement to free legal aid or for legal aid with a symbolic financial contribution from the person affected is relatively low,³³⁵ but there is still a relatively significant group of people who would not be able to pay for legal services (i.e. they do not fall under the threshold and hence are not entitled to the free/symbolically paid legal aid, but are still unable to pay it by themselves).³³⁶

In cases of breaches of the principle of equal treatment, the Slovak National Centre for Human Rights should arrange legal assistance for victims of discrimination (no matter what their income) but the Slovak National Centre for Human Rights does not fulfil this task very efficiently (for more details see chapter 7 of this report). Out of 90 complaints of discrimination received in 2018, the centre found the breach of the principle of equal

³³⁰ Meaning two months after the (invalidly terminated) employment relationship would have ended (as a consequence of the invalid termination). See Slovakia, Labour Code, 311/2001, Section 77.

³³¹ See the judgment of the Supreme Court of the Slovak Republic, No. 2 Cdo 278/2007, 1 November 2008.

³³² Slovakia, Civil Dispute Act, 160/2015, Section 254.

³³³ Slovakia, Act No. 327/2005 on Providing Legal Aid to Persons in Material Need, as amended (*zákon č. 327/2005 Z. z. o poskytovaní právnej pomoci osobám v materiálnej núdzi, v znení neskorších predpisov*).

³³⁴ Slovakia, Act on Providing Legal Aid to Persons in Material Need, 327/2005, Section 3(1).

³³⁵ Slovakia, Act on Providing Legal Aid to Persons in Material Need, 327/2005, Sections 6 and 6a.

³³⁶ In addition, family members living in one household are, for the purposes of determining the level of their income, considered jointly unless they are opposing parties to a proceeding (see Section 4(2) of the act). This may exclude certain groups of persons from applying for the free legal aid/legal aid with a symbolic financial contribution (e. g. women subject to intimate partner violence, pupils/students living in one household with higher income parents who might not be supporting their children in pursuing legal proceedings in cases of discrimination, etc).

treatment in relation to 16 complaints and provided legal representation before courts in one new case of discrimination.³³⁷

There is no obligatory legal representation in proceedings concerning discrimination (apart from proceedings before the Constitutional Court).

In 2012, the Centre for Civil and Human Rights, a Slovak NGO active in the field of non-discrimination, published a study of access barriers to efficient legal protection against discrimination.³³⁸ Part of the study presented a nationwide survey on the barriers encountered by people who subjectively feel that they have been discriminated against but do not seek legal aid or use legal means to defend themselves against discrimination. The survey showed that just a tiny percentage (4.7 %) of respondents who felt that they have been discriminated against have sought legal assistance or sought to lodge a claim against discrimination by legal means. Over 92 % have not taken any steps to defend themselves.

The reasons why those discriminated against decided not to challenge discrimination by legal means and not to seek legal assistance were relatively evenly distributed across the population of Slovakia. They included lack of trust in the institutions that might successfully resolve discrimination (13.1 % of responses), lack of evidence (11.8 % of responses), the fact that people who felt discriminated against did not consider it important to resolve their case (11.6 %), lack of information as to where and to whom to turn for legal assistance (over 10 %). The Centre for Civil and Human Rights concluded:

'[t]he nationwide research results indicated an overall scepticism and even resignation with regard to any solution, as well as the conviction that discrimination in Slovakia is so normal and widespread that it makes no sense to oppose it and that it is not possible to obtain justice in Slovakia.'³³⁹

c) Number of discrimination cases brought to justice

In Slovakia, there are no available statistics on the number of cases related to discrimination brought to justice. There are some data on finalised cases collected by the Ministry of Justice, but the data is very inaccurate and insufficient (for reasons explained in more detail in section 6.1(d) below).

In response to a request for information filed by the author of this report with the Ministry of Justice on the numbers of cases of discrimination decided by Slovak courts and any corresponding statistics, the ministry presented data in relation to four (final) judicial decisions delivered by district courts in the first half of 2018. The information provided by the ministry included the name of the court, the file number and a date when the decision became final. Discrimination on a ground of other status was claimed in all cases finally decided. In addition, the Ministry of Justice expressed its concerns about data collection by some courts, as it checked the data provided, some of which turned out to be inaccurate (the ministry found that some courts identified some cases as anti-discrimination disputes, but when the ministry reviewed the files it turned out that the cases did not concern discrimination). The ministry presented some developments in data collection effective

³³⁷ Response of the Centre of 7 February 2019 to a request for information of 30 January 2019 filed by the NGO Centre for Civil and Human Rights (the author cooperates with the NGO and holds the responses on file).

³³⁸ Durbáková, V., Holubová, B., Ivanco, Š., Liptáková, S. (2012), *Hľadanie bariér v prístupe k účinnej právnej ochrane pred diskrimináciou*, (Searching for barriers in access to effective legal protection from discrimination) Košice: Poradňa pre občianske a ľudské práva, pp. 78-79. The publication is also available at <https://www.poradna-prava.sk/sk/dokumenty/diskriminacia-na-slovensku-hladanie-barier-v-pristupe-k-ucinnej-pravnej-ochrane-pred-diskriminaciou/>.

³³⁹ Durbáková, V., Holubová, B., Ivanco, Š., Liptáková, S. (2012), *Hľadanie bariér v prístupe k účinnej právnej ochrane pred diskrimináciou*, Košice: Poradňa pre občianske a ľudské práva, pp. 27-49 and p. 129.

from 1 January 2019, which will improve data collection by the ordinary courts in this regard.³⁴⁰

The statistics provided by the Ministry of Justice do not contain information on discrimination-related proceedings and decisions by the Supreme Court and the Constitutional Court (see also section 6.1(d) below).

It is obvious that the statistics collected by the Ministry of Justice provide only partial information on (final) cases of discrimination that have been decided by ordinary courts in Slovakia. Part of the study by the Centre for Civil and Human Rights described in the previous section presented the results of the organisation's monitoring of judicial decisions in the field of (non)discrimination (the monitoring covered both final and non-final decisions delivered by district and regional courts in Slovakia between 1 July 2004³⁴¹ and 31 January 2012, pursuant to the Anti-discrimination Act).³⁴² The Centre for Civil and Human Rights found that about 120 proceedings relating to discrimination had been concluded in the period covered.³⁴³ This number is desperately low, especially given that the Anti-discrimination Act has been in existence since 2004 (and some anti-discrimination provisions were contained in Slovak legislation even earlier), and also that discrimination is a very widespread phenomenon in Slovakia.

There is no more recent data on the number of proceedings or decisions in the field of discrimination.

d) Registration of discrimination cases by national courts

In Slovakia, discrimination cases are not properly registered as such by national courts.

The registration of discrimination cases by courts and the subsequent data collection for statistical purposes, as well as making the data accessible to the public is very problematic. The deficiencies in the system result in totally inaccurate data about discrimination cases, which is also very difficult to access. In order to eliminate problems in the registration of discrimination cases by national courts, in 2018, the Ministry of Justice developed new rules of registration of final court decisions in discrimination cases. From 1 January 2019, the courts will have the possibility to choose 'anti-discrimination dispute' as the type of judicial proceeding and will also record the ground of discrimination and the material scope of the discrimination case. The ministry also stated that during 2018, it organised several workshops for national courts in order to prevent shortcomings in the registration of discrimination cases.³⁴⁴

Although courts are obliged to publish all of their final decisions (after the necessary anonymisation) online, experience shows that this does not happen in practice. Many of the decisions relating to discrimination that are known to the author of this report are not available online. Researching Constitutional Court decisions is somewhat easier as the Court publishes each of its decisions online and it is also possible to search by individual articles of the Constitution. The Supreme Court also publishes its decisions on its website.

³⁴⁰ Response from the Ministry of Justice of 12 February 2019 to a request for information of 31 January 2019 (on file with the author).

³⁴¹ The date of the Anti-discrimination Act coming into force.

³⁴² Durbáková, V., Holubová, B., Ivanco, Š., Liptáková, S. (2012), *Hľadanie bariér v prístupe k účinnej právnej ochrane pred diskrimináciou*, (*Searching for barriers in access to effective legal protection from discrimination*) Košice: Poradňa pre občianske a ľudské práva, pp. 69-104 and pp. 131-133.

³⁴³ The number may not be very accurate, as not all the courts approached with a request for information on the proceedings provided this information, and the Ministry of Justice does not collect the corresponding statistics properly.

³⁴⁴ Response from the Ministry of Justice of 12 February 2019 to a request for information of 31 January 2019 (on file with the author).

6.2 Legal standing and associations (Article 7(2) Directive 2000/43, Article 9(2) Directive 2000/78)

a) Engaging on behalf of victims of discrimination (representing them)

In Slovakia, associations, organisations and trade unions are entitled to act on behalf of victims of discrimination.

According to Section 10(1)(a) of the Anti-discrimination Act, the claimant in (civil) proceedings pursuant to the act (but in principle, also the defendant given that the provision talks about 'parties to the proceedings concerning the violation of the principle of equal treatment') can be represented by a legal entity that has the authority to do so (i.e. the authority to represent a party in proceedings concerning the principle of equal treatment) in accordance with a separate law. Under the Act on Establishing the Slovak National Centre for Human Rights (see chapter 7 of this report), the Slovak National Centre for Human Rights (the equality body) is entitled by law to represent the claimant in proceedings concerning the violation of the principle of equal treatment.

According to Section 10(1)(b) of the Anti-discrimination Act the parties can also be represented by a legal entity 'whose activities are aimed at or consist in the protection against discrimination' (in practice, this usually means NGOs, but in theory, it could also be trade unions and the law does not stipulate any more detail about such organisations). If the legal entity takes up the representation, it authorises one of its members or employees to act on its behalf.³⁴⁵

According to Section 308 of the Civil Dispute Act, the parties in anti-discrimination disputes can be represented by a person (or legal entity) authorised by anti-discrimination legislation.³⁴⁶

In all civil proceedings related to individual employment relations, a party to the proceedings can be represented by a trade union.

Associations can represent victims in civil proceedings before ordinary courts, but not before the Constitutional Court. The fact that NGOs cannot represent victims of discrimination before the Constitutional Court ultimately makes such representation in some cases inadequate and inefficient.

As the Slovak National Centre for Human Rights is authorised to represent parties to proceedings in matters of breaches of the principle equal treatment under the same conditions as associations, the same also applies to the equality body.

If an NGO takes up the representation of a person affected by discrimination (or several people affected by discrimination in the case of a class action), it must assign one of its members and/or employees to act on behalf of the person(s) represented. If an NGO or the Slovak National Centre for Human Rights takes up legal representation in civil proceedings under the Anti-discrimination Act, all conditions applicable for the legal representation of individuals mentioned above (i.e. on the type of conditions that the legal entity must fulfil, the types of remedies that it can request on behalf of the claimant, the conditions regarding the burden of proof etc.) are equally applicable.

In administrative proceedings, parties to the proceedings, their legal representatives and their guardians can be represented by a lawyer or by 'another representative of their choice'.³⁴⁷ This means that people affected by discrimination can in principle select any natural or legal person to represent them, including NGOs or the Slovak National Centre

³⁴⁵ Slovakia, Civil Dispute Act, 160/2015, Section 317.

³⁴⁶ Slovakia, Civil Dispute Act, 160/2015, Section 308.

³⁴⁷ Slovakia, Administrative Code, 71/1967, Section 17(1).

for Human Rights. In proceedings before administrative courts concerning judicial review of administrative decisions, the NGOs, trade unions and some other legal entities can represent the party to the proceedings.³⁴⁸

As far as criminal law is concerned, the victim in criminal proceedings can be represented by a proxy. Any person whose capacity to act legally is not limited can become a proxy, including an authorised representative of an organisation that helps those affected by crimes.³⁴⁹ 'An organisation with the remit of helping those affected by crimes' is, pursuant to Section 10(23) of the Criminal Procedure Act, an NGO that provides free legal assistance to those affected by crimes.

Regarding a complaint dealt with by a public body, although there is no specific provision as to the legal standing of associations, the law does not prohibit other natural persons or legal entities from acting (submitting a complaint) on behalf of a complainant.

NGOs and trade unions do not have a legal duty to act. The Act on Establishing the Slovak National Centre for Human Rights provides that the Centre 'secures legal aid for victims of discrimination and intolerance'.³⁵⁰

b) Engaging in support of victims of discrimination (joining existing proceedings)

In Slovakia, associations, organisations and trade unions are entitled to act in support of victims of discrimination.

According to Section 95 of the Civil Dispute Act, 'the court can also without any proposal invite into the court proceeding a public body whose aim is protection of fundamental rights and freedoms or legal entity which is entitled to rights protection, to engage in proceedings, if the relevant party agrees.'³⁵¹

These provisions make it possible for the Slovak National Centre for Human Rights and NGOs (and possibly also trade unions) to engage in support of victims of discrimination.

Other forms of support are also possible although not explicitly listed in legislation (e.g. a written legal opinion from an NGO or other entity in the form of an amicus brief). In 2018, the Public Defender of Rights submitted an amicus brief to the first instance court in a case of discrimination based on an *actio popularis* claim submitted by the NGO Centre for Civil and Human Rights.³⁵² Expert opinions issued by the Slovak National Centre for Human Rights³⁵³ at the request of a claimant are sometimes submitted to the courts (by the claimants, if they decide to submit the opinions requested from the centre).

c) *Actio popularis*

In Slovakia, national law allows associations, organisations and trade unions to act in the public interest on their own behalf, without a specific victim to support or represent (*actio popularis*).

³⁴⁸ Slovakia, Administrative Judicial Act, 162/2015, Section 50.

³⁴⁹ Slovakia, Criminal Procedure Code, 301/2005, Section 53.

³⁵⁰ Slovakia, Act No 308/1993 on Establishing the Slovak National Centre for Human Rights (*zákon č. 308/1993 Z. z. o zriadení Slovenského národného strediska pre ľudské práva*), Section 1(2)(e).

³⁵¹ Slovakia, Civil Dispute Act, 160/2015, Section 95.

³⁵² Prešov District Court, case *Poradňa pre občianske a ľudské práva (Center for Civil and Human Rights) v the Ministry of Education and the District Office in Prešov*, proceedings file n. 29C/14/2016. Information on submitting an amicus brief is also available on the Public Defender of Rights' website (in Slovak only) <http://www.vop.gov.sk/segreg-cia-na-slovensku-pretrv-va-pr-pad-koly-v-terni-rie-i-s-d>.

³⁵³ Under Section 1(2)(f) of the Act on the Slovak National Centre for Human Rights, the centre is granted the competence to prepare expert opinions concerning compliance with the principle of equal treatment upon a request or its own initiative. In 2018, the centre issued 15 expert opinions.

Section 9a of the Anti-discrimination Act stipulates that, if a breach of the principle of equal treatment could violate rights or interests protected by law or freedoms of a greater or non-specified number of persons, or if the public interest could be otherwise seriously endangered by such a violation, the right to invoke the protection of the right to equal treatment is also vested in the Slovak National Centre for Human Rights or a legal entity that is 'concerned with or active in protection against discrimination' (usually NGOs, but in principle also trade unions).

These entities can request that the court determines that the principle of equal treatment has been breached, that the entity breaching the principle of equal treatment refrains from such conduct and, where possible, rectifies the illegal situation. The list of these actions is non-exhaustive. In principle it can also include some financial compensation, but judicial interpretation would be required in this regard. Although this provision is quite progressive, it is only rarely used in practice. Only one domestic NGO – the Centre for Civil and Human Rights – has initiated proceedings by using *actio popularis* so far (in cases of an indirect discriminatory legal provision of the Childbirth Allowance Act and in cases of segregation of Roma children in education and Roma women in maternity wards). An international NGO, the European Roma Rights Centre has submitted a few *actio popularis* claims to Slovak courts in cases of discrimination. The Slovak National Centre for Human Rights has not initiated any *actio popularis* proceedings so far.

For *actio popularis* proceedings, the same concept of the shift in the burden of proof applies as in all other proceedings in cases of breaches of the principle of equal treatment initiated on the basis of the Anti-Discrimination Act.

d) Class action

In Slovakia, national law allows associations, organisations and trade unions to act in the interest of more than one individual victim (class action) for claims arising from the same event.

There are no restrictions as to the number of petitioners who can be represented (although the Anti-discrimination Act is not explicit on the matter). Class actions are also possible in Slovak civil judicial proceedings, meaning that a group of citizens can lodge an action based on the same facts, where each victim must stand as a claimant.

According to Section 75 of the Civil Dispute Act, in cases where more than 10 subjects are party to the proceedings, the court can decide that only one subject should represent the group.³⁵⁴

6.3 Burden of proof (Article 8 Directive 2000/43, Article 10 Directive 2000/78)

In Slovakia, national law requires a shift of the burden of proof from the complainant to the respondent. However, this is only applicable to civil proceedings.

According to Section 11(2) of the Anti-discrimination Act, if the claimant

'communicates to the court facts which give rise to a reasonable assumption that a violation of the principle of equal treatment occurred, the defendant has the obligation to prove that there was no violation of the principle.'

The shifting of the burden of proof is applicable in all civil judicial proceedings filed on the basis of the Anti-discrimination Act and 'in proceedings in matters connected to a breach of the principle of equal treatment'. As a breach of the principle of equal treatment is

³⁵⁴ Slovakia, Civil Dispute Act, 160/2015, Section 75.

defined very broadly (to include, for example, victimisation, instruction to discriminate, incitement to discriminate, breach of the duty to adopt measures to prevent discrimination etc.), the concept of shifting the burden of proof should apply to all the components of the equal treatment principle and to all prohibited forms of discrimination.

The Constitutional Court has provided this interpretation of the shift in the burden of proof:

'burden of proof does not only and exclusively burden the defendant, but it also burdens the claimant. The claimant must, by priority, bear the burden of proof concerning the facts from which it can be inferred that direct or indirect discrimination, or, let us say, [a breach of] the principle of equal treatment, has been committed. The claimant must allege and at the same time submit proofs (bear the burden of proof) from which it can be reasonably concluded that the principle of equal treatment has been breached. At the same time, they must allege that their race or ethnic affiliation (origin) is the inducement for the discriminatory action. It is only thereafter that the burden of proof is shifted on to the defendant, who has the right to prove their allegations that they have not breached the principle of equal treatment.'³⁵⁵

In 2015, the Constitutional Court provided some additional clarifications in relation to selected aspects of the burden of proof in anti-discrimination proceedings.³⁵⁶ The court emphasised the specificities of anti-discrimination proceedings, which are very demanding in terms of evidence assessment. It also pointed to the specific distribution of the burden of proof where the 'claimant is supposed to communicate to the court the facts which give rise to a reasonable assumption (i.e. not an unquestionable settlement) that a violation of the principle of equal treatment occurred',³⁵⁷ which establishes the shift of the burden of proof on to the defendant. Whether the burden of proof gets shifted or not depends on the quality of the assessment of the evidence available – from the point of view of whether the deciding court has thoroughly considered all facts that emerged in the proceedings.³⁵⁸ The Constitutional Court, referring to case law from the Czech Constitutional Court,³⁵⁹ also held that 'the requirement for the claimant to prove that their discrimination has taken place because of their racial (ethnic) origin and not for another reason can apparently not be fulfilled since proving the motivation (incentive) of the defendant is simply impossible, due to the nature of the issue itself'.³⁶⁰ Thus, the Constitutional Court confirmed that the claimant does not have to establish the motivation/incentive (the Constitutional Court uses both of these words) of the defendant to discriminate.

In a case decided by the Constitutional Court in 2013, the Constitutional Court adhered to an assessment of a second instance court from an earlier stage of the proceedings that 'the defendant proved that it is more likely that the discrimination hasn't taken place than it is likely that the discrimination has taken place, and so he discharged his burden of proof'. The Constitutional Court did not provide any comprehensive test on assessing the level of probability of discriminatory treatment. According to the author of this report, this practice is in violation of CJEU case law (for example *CHEZ Razpredelenie Bulgaria* C-83/14.).³⁶¹

³⁵⁵ Finding of the Constitutional Court, No IV. ÚS 16/09, 30 April 2009, available at: https://www.ustavnysud.sk/documents/10182/992376/95_09a.pdf/13520fbb-1782-46cd-9402-76137529c669.

³⁵⁶ Finding of the Constitutional Court of the Slovak Republic, No III. ÚS 90/2015-40, 1 December 2015.

³⁵⁷ This wording (except for the words in brackets) is contained in Section 11(2) of the Anti-discrimination Act.

³⁵⁸ Finding of the Constitutional Court of the Slovak Republic, No III. ÚS 90/2015-40, 1 December 2015, p. 15.

³⁵⁹ Finding of the Constitutional Court of the Czech Republic, No Pl. ÚS 37/04, 26 April 2006.

³⁶⁰ Finding of the Constitutional Court of the Slovak Republic, No III. ÚS 90/2015-40, 1 December 2015, pp. 17-18.

³⁶¹ Finding of the Constitutional Court, No II. ÚS 383/2013-16, *V. S. v Primary School of Ivan Branislav Zoch in Revúca*, 10 July 2013. In this decision, the Constitutional Court seems to be indicating that once the burden of proof is shifted on to the respondent (upon the applicant establishing facts from which it may be presumed that there has been discrimination), the respondent is not obliged to prove beyond any doubt that there has been no breach of the principle of equal treatment (as the directives presumably require) but that it is sufficient to provide evidence establishing some probability of non-discrimination, provided that the

The implementation of this measure by Slovak courts is still problematic in practice. The UN Committee of the Elimination of Racial Discrimination in its decision against Slovakia concerning an individual case of discrimination against a Roma woman in accessing employment has also highlighted this fact and recommended that the state fully enforce its Anti-discrimination Act through the enhancement of available court proceedings for victims of racial discrimination by ensuring, inter alia, that the principle of shifted burden of proof is applied in line with Article 11 of the Anti-discrimination Act.³⁶² The improper implementation of shifting the burden of proof has also been challenged by the decision of the UN Committee on the Elimination of Discrimination against Women, in its view adopted on 16 November 2016 of *D.S. v. Slovakia*, a case of discrimination against a woman in employment on the grounds of her family status and sex (illegal dismissal upon her return to workplace from parental leave).³⁶³

The Act on Labour Inspection³⁶⁴ does not contain any explicit and clear provisions on the burden of proof in relation to identifying breaches of the principle of equal treatment.

The Criminal Procedure Act allows for no exceptions to the traditional concept of burden of proof in criminal proceedings.

6.4 Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78)

In Slovakia, there are legal measures of protection against victimisation. Article 12(4) of the Constitution generally prohibits any victimisation resulting from the exercise of basic rights guaranteed under the Constitution.

Under Section 2a (1) of the Anti-discrimination Act, victimisation is considered to be a form of discrimination. The Anti-discrimination Act also contains an explicit definition of victimisation according to which victimisation means any action or omission that is unfavourable to the person concerned and is directly connected to a) seeking legal protection against discrimination for oneself or on behalf of another person, or to b) providing a witness testimony, an explanation or is connected to other involvement of a person in a proceeding concerning the violation of the principle of equal treatment, or to c) a complaint invoking a breach of the principle of equal treatment.³⁶⁵ Thus, it is not only a complainant directly affected by discrimination but anybody else who acts as a witness or a general complainant who is protected against adverse treatment.

In addition to this provision, several other laws regulate protection against victimisation.³⁶⁶ The only procedural guarantee against victimisation is included in the Anti-discrimination

probability of non-discrimination is higher than the probability of discrimination. It seems that in the case presented, the Slovak Constitutional Court lowers the requirements and standards of proof on the side of the defendant once the burden of proof has been shifted to them, which may not be compatible with the requirements of EU law on the burden of proof in discrimination cases and is reminiscent of a more traditional approach to burden of proof in civil law.

³⁶² See CERD (2015), 'Opinion of the UN Committee on the Elimination of Racial Discrimination in the case of *V.S. v. Slovakia*', Communication no. 56/2014 from 16 December 2015, para 7.4. and 9, available at <https://www.poradna-prava.sk/en/documents/opinion-of-the-cerd-in-the-case-of-v-s/>.

³⁶³ See CEDAW (2016), 'Views of the UN Committee on the Elimination of All Forms of Discrimination Against Women in *D.S. v. Slovakia*', Communication no. 66/2014, adopted on 21 November 2016, available at <https://www.poradna-prava.sk/en/documents/views-adopted-by-the-cedaw-committie-in-the-case-of-d-s/>.

³⁶⁴ Slovakia, Act No 125/2006 on Labour Inspection and changing and supplementing Act No 82/2005 on Illegal Work and Illegal Employment and changing and supplementing certain laws, as amended (*zákon č. 125/2006 Z. z. o inšpekcií práce a o zmene a doplnení zákona č. 82/2005 Z. z. o nelegálnej práci a nelegálnom zamestnávaní a o zmene a doplnení niektorých zákonov v znení neskorších predpisov*).

³⁶⁵ Slovakia, Anti-discrimination Act, 365/2004, Section 2a (8).

³⁶⁶ Slovakia, Complaints Act, 9/2010, Sections 7 and 8. These sections stipulate that the mere fact of filing an action must not be used to the detriment of the complainant. Moreover, the complainant may request that their identity not be disclosed. The other law is the Labour Code, Section 13(3), which states that no person may be persecuted or otherwise adversely treated in the workplace as a reaction to a complaint, action, petition to start criminal proceedings, or other report on criminality or other anti-social activity against another employee or the employer. Similar provisions are enshrined in other acts, for example the Act on the State Service of Customs Officers, Act on the State Service of Members of the Police Force, Act on the

Act. A case of victimisation decided by domestic courts concerned a Roma woman who claimed to be discriminated against in her workplace on the ground of her Roma ethnic origin. Among other forms of discrimination, she also pointed out that direct discrimination and harassment against her resulted in victimisation after she repeatedly complained to the employer about how she was treated. The district and regional courts dismissed this lawsuit. The case is now pending before the European Court of Human Rights in Strasbourg.³⁶⁷

6.5 Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78)

a) Applicable sanctions in cases of discrimination – in law and in practice

As mentioned above, victims of discrimination have the right to sue the perpetrator – be it a natural person or a legal entity, a public or private body – and request a number of remedies, including (the list is not exhaustive) that they be made to refrain from such conduct and, where possible, rectify the illegal situation or provide adequate satisfaction. If the adequate satisfaction is insufficient, generally in cases where the violation of the principle of equal treatment has considerably impaired the dignity, social status or social achievement of the victim, a claimant may also seek financial compensation for non-pecuniary damage. The amount of this financial compensation is determined by the court, which must take into account the seriousness of the non-pecuniary damage and all underlying circumstances. Material damages resulting from such treatment may also be claimed.³⁶⁸ There is no difference in the procedure, whether a public or private entity is being sued.

Since the list of possible claims is non-exhaustive, other possible claims include determining (by the court) that the principle of equal treatment has been violated or declaring a job termination invalid.³⁶⁹

In the area of both public and private employment, labour inspectorates (based in every region of the country) as the bodies that oversee the observance of employment legislation (including appointment, dismissal, pay and working conditions) have the authority to impose a fine of up to EUR 100 000³⁷⁰ (and in some cases up to EUR 200 000)³⁷¹ on the entities that fall under their jurisdiction and that have breached their duties under the provisions of the employment legislation. The manager whose conduct has breached their statutory duties in the field of employment and their obligations under collective agreements may be fined up to four times their average monthly salary.³⁷² As for access to employment, the offices of labour, social affairs and family are entitled to investigate complaints regarding potentially discriminatory job announcements.³⁷³ If the labour office finds violation, it can impose a fine up to EUR 33 193. In practice, the labour offices face difficulties in identifying the entity that published the discriminatory announcement and that is why they cannot sanction the responsible person and/or company. The liability of

Fire and Rescue Service, Employment Services Act, Higher Education Act, the Schools Act and the Healthcare Act.

³⁶⁷ Decision of the District Court Košice II, No. 20C68/2012-350, 8 September 2015 and decision of the Regional Court in Košice, No. 2Co/657/2015 – 379, of 13 December 2016. European Court of Human Rights, application n. 77422/17.

³⁶⁸ Slovakia, Anti-discrimination Act, 365/2004, Section 9.

³⁶⁹ The Slovak courts do not have a problem with declaring that the principle of equal treatment has been violated (and the Supreme Court confirmed the legitimacy of this claim in its decision of 22 February 2012, No. 5 Cdo 257/2010). With regard to invalidity of job termination (for the reason of discrimination) and the subsequent wage compensation, the Supreme Court held that these are possible claims (decision of the Supreme Court of Slovakia, No 5 Cdo 56/2014, 24 March 2015, p. 8).

³⁷⁰ Slovakia, Labour Inspection Act, 125/2006, Section 19(1)(a).

³⁷¹ Slovakia, Labour Inspection Act, 125/2006, Section 19(2)(b)(1) in conjunction with Section 19(3)(c).

³⁷² Slovakia, Labour Inspection Act, 125/2006, Section 19(1)(c).

³⁷³ Slovakia, Employment Act, 5/2004, Sections 12 and 13 in conjunction with Section 62(2).

advertising agency is not examined.³⁷⁴ In education, the competent body is the State School Inspectorate. If the liable employee of a school or a school facility fails to remove the deficiencies identified by the inspection, they will be fined up to EUR 331.³⁷⁵

In the area of access to goods and services, the monitoring authorities (offices of the Slovak Trade Inspectorate) may punish discriminatory conduct with a fine of up to EUR 16 600. Where there are multiple violations of a legal obligation within one year, the inspectorate may impose a fine up to EUR 33 000. In practice, recent fines for discrimination imposed by the Slovak Trade Inspectorate were up to EUR 1 200. According to the assessment of the author of this report, most of the fines are about EUR 1 000 for the most common offences, such as not providing a bill to a customer, selling goods after their expiration period or not providing proper and visible information about selling goods. In this regard, it can be concluded that the Trade Inspectorate considers racial discrimination to be a somewhat more serious offence imposing fines over EUR 1 000. Nevertheless, the fines for discrimination have so far proven to be ineffective or not sufficiently dissuasive in practice.³⁷⁶

b) Ceiling and amount of compensation

The amount of financial compensation for non-pecuniary damage is not limited and depends primarily on the seriousness of the damage caused and the circumstances under which it occurred.

The amount of compensation for pecuniary damage is not limited – the claimant must prove the real material damage that they have suffered and the causal link between the damage suffered and the unlawful act of the defendant. The only exception seems to be claims of wage compensation in cases of illegal dismissals (this is, however, a general remedy applicable under the Labour Code, although the Supreme Court has already held that it is also applicable in anti-discrimination proceedings – see section 6.1 above). According to Section 79(2) of the Labour Code,

‘if the overall time for which an employee should receive wage compensation is greater than 12 months, a court may, at the request of the employer, reduce the employer’s obligation to pay wage compensation for the period in excess of 12 months by a proportionate amount or may decide not to award the employee any wage compensation for the period in excess of 12 months. Wage compensation shall be awarded for a period of no more than 36 months.’

There is no official or other information available on the average amount of compensation awarded to victims.

However, a study, published in 2012 by an NGO, the Centre for Civil and Human Rights,³⁷⁷ offers some information on the amounts of compensation for non-pecuniary damage that have been granted by courts in cases of discrimination at that time.³⁷⁸ The number of cases

³⁷⁴ For example in some cases the announcement makes a statement such as ‘Alcoholics, lazy people and Roma do not call!’ but only a phone number is published and according to the domestic legislation the mobile operator and police are not obliged to provide the labour office with the personal data of the phone holder.

³⁷⁵ Slovakia, Act No 596/2003 on State Administration of the School System and School Self-Governance, Section 37a(2)(b).

³⁷⁶ Response of the Slovak Trade Inspectorate of 1 March 2018 to a request for information of 23 February 2018 (on file with the author).

³⁷⁷ Durbáková, V., Holubová, B., Ivanco, Š., Liptáková, S. (2012), *Hľadanie bariér v prístupe k účinnej právnej ochrane pred diskrimináciou*, (*Searching for barriers in access to effective legal protection from discrimination*) Košice: Poradňa pre občianske a ľudské práva. The publication is also available at <http://www.poradna-prava.sk/site/assets/files/1114/diskriminacia-na-slovensku.pdf>.

³⁷⁸ The study presents the finding that, of 22 cases where courts found violations of the principle of equal treatment and where claimants also sought financial compensation for their non-pecuniary damage, this compensation was only granted in 12 cases. In cases where financial compensation for non-pecuniary

in which compensation for non-pecuniary damage was awarded at that time was already indicative of the unwillingness of Slovak courts to grant this type of compensation. Indeed, as the authors of the study note, after analysing all the decisions available at that time, courts often considered the fact that the declaration of a violation of the principle of equal treatment has been made to represent sufficient satisfaction for the person discriminated against.³⁷⁹ No recent study has been published on this issue, and, to the knowledge of the author of this report, the practice of the courts in this respect has not changed.

There are no more recent complex data on the amounts of compensation awarded. The Ministry of Justice in its reply to the author of this report did not provide any information about the amount of compensation granted by courts in cases that were finalised by effective judgments in the first half of 2018.

In 2014, in a case of discrimination against Roma in access to a local bar, the court ordered the bar owner to pay the Roma who had been discriminated against financial compensation to the amount of EUR 300 each and legal costs. This is one of the first final court decisions in Slovakia in which the court has awarded non-pecuniary damage for racial discrimination in access to services – the total amount the defendant had to pay is EUR 600 for non-pecuniary damage and approximately EUR 1 800 in legal costs.³⁸⁰ In a case of discrimination against a Roma woman in access to employment decided by the first instance court in 2017,³⁸¹ the court awarded the claimant EUR 2 500 out of EUR 5 000 requested.

c) Assessment of the sanctions

It is already clear that the courts are fairly reluctant to award financial compensation at all for non-pecuniary damage in cases of discrimination and when such compensation is granted, the amounts tend to be symbolic (only slightly exceeding the average monthly salary in Slovakia). These amounts of compensation are hardly effective, proportionate and dissuasive (and even unofficial sources from the business sector confirm that fear of serious sanctions in discrimination-related claims has not so far become a part of their risk-assessment in management).

One of the reasons for this inadequate implementation of the requirements of the directives may be the wording of the corresponding provision of the Anti-discrimination Act (Section 9(3)) which requires a finding of a 'considerable impairment of the dignity, social status or social achievement of the person injured' in order for financial compensation for non-pecuniary damage to be awarded.³⁸²

Although this set of conditions is not exhaustive and courts are supposed to take into account 'the seriousness of the non-pecuniary damage and all underlying circumstances', the most frequent practice is that persons affected by discrimination have to prove how

damage was granted, this was usually in the field of employment or access to it (eight cases). Two remaining cases in which financial compensation for non-pecuniary damage was granted were in the fields of access to services and housing. In six cases, the amounts awarded were most frequently around EUR 1 000 or slightly over (up to EUR 1 327.75). In one case (relating to ethnicity) the compensation was EUR 165.96 for each claimant (the case concerned several claimants), in another case it was EUR 3 983.75, in another it was EUR 3 3198.39 and in the remaining case it was EUR 66 387.83. In the latter case the ground for discrimination was not given in the proceedings, so it is unclear how the case relates to the Anti-discrimination Act and the EU directives in general. In addition, the decision was not yet final.

³⁷⁹ Durbáková, V., Holubová, B., Ivanco, Š., Liptáková, S. (2012), *Hľadanie bariér v prístupe k účinnej právnej ochrane pred diskrimináciou*, (Searching for barriers in access to effective legal protection from discrimination) Košice: Poradňa pre občianske a ľudské práva, p. 98.

³⁸⁰ Decision of the District Court in Spišská Nová Ves, No. 1C 118/2010- 175, 25 April 2014 reaffirmed by the decision of the Regional Court in Košice, No. 6 Co 833/2014 – 223, 28 June 2016. More information on the case is available at <https://www.poradna-prava.sk/en/documents/press-release-the-slovak-court-ordered-a-bar-owner-to-pay-compensation-for-discrimination/>.

³⁸¹ Decision of the District Court in Spišská Nová Ves, No 8 C 268/2016 – 523, 23 March 2017 upheld by the decision of the Regional Court in Košice by its decision of 7 February 2018 ref. No. 9Co 259/2017.

³⁸² See Section 6.1(a) for the full wording of the relevant provision.

their dignity has been 'considerably impaired', instead of the perpetrators' behaviour being judged as inherently humiliating and impairing a person's dignity.³⁸³ Thus, instead of bringing the perpetrators to justice, the individuals affected by discrimination often have to go through their trauma again, including during the judicial proceedings, and remain disillusioned after the judicial decision is announced. A change in legislation reflecting the need for a paradigm shift (judging the behaviour and treatment of the perpetrator instead of burdening and re-traumatising the victim) would be more than welcome.

As regards financial compensation for non-pecuniary damage, there is another problematic issue, namely the judicial fees. According to Slovak legislation, the claimant is supposed to pay 3 % of any sum claimed as financial compensation for non-pecuniary damage. This means that the higher the amount claimed as compensation for non-pecuniary damage, the higher the judicial fee – which hinders claimants from even requesting amounts that would be effective, proportionate and dissuasive. The judicial fees are paid in advance and in every instance, and they are doubled before the Supreme Court.³⁸⁴

The issue about the effectiveness, proportionality and dissuasiveness of sanctions remains relevant in respect to trade and labour inspectorates (see section 6.1 above).

On other remedies granted in cases of discrimination, when the courts declare that discrimination has occurred, they generally oblige the discriminator to provide a written apology to the person discriminated against and tend to find this remedy to be sufficient. However, in most of cases of discrimination such a sanction by itself cannot be considered to be effective, proportionate and dissuasive as required by the directives and must be followed by financial compensation and or other financial sanction.

³⁸³ An exception to this practice is a decision by the District Court in Spišská Nová Ves of 25 April 2014 (ref. No 1C/118/2010-175) reaffirmed by the decision of the Regional Court in Košice, No 6 Co 833/2014 – 223 from 28 June 2016, where the district court argued that the defendant's action was directed against the dignity of the complainants and that they were 'gravely humiliated' by this action, and went on to say that '[a]ny discrimination is undoubtedly objectively degrading for every person affected by it' and that it represents action that is 'particularly dangerous and socially inadmissible'.

³⁸⁴ If, however, the first instance court awards some but not all of the requested compensation, the fee before the second instance court (and later possibly before the Supreme Court) is only calculated from the difference between the amount originally claimed and the amount actually awarded.

7 BODIES FOR THE PROMOTION OF EQUAL TREATMENT (Article 13 Directive 2000/43)

- a) Body/bodies designated for the promotion of equal treatment irrespective of racial/ethnic origin according to Article 13 of the Racial Equality Directive

On 1 July 2004, by the adoption of Anti-discrimination Act,³⁸⁵ the Slovak National Centre for Human Rights became the specialised body for the promotion of equal treatment for all grounds of discrimination covered by the Anti-discrimination Act. With the adoption of the Anti-discrimination Act, Act 308/1993 on Establishing the Slovak National Centre for Human Rights ('Act on the Centre') was amended.³⁸⁶

According to the Act on the Centre, the centre is an independent, non-judicial body, subsidised by the state. According to Section 1 of the Act on the Centre, the centre fulfils tasks in the field of fundamental rights and freedoms. To these ends, the centre does the following:

- monitors and evaluates the observance of human rights and the observance of the principle of equal treatment, in accordance with the Anti-discrimination Act;
- gathers information on racism, xenophobia and anti-Semitism in Slovakia and provides this information on request;
- conducts research and surveys for the purpose of providing data in the field of human rights, gathers and, on request, provides information in this field;
- prepares educational activities and takes part in information campaigns with the aim of increasing tolerance in society;
- secures legal aid for victims of discrimination and intolerance;
- issues, on request of natural persons or legal entities or on its own initiative, expert opinions in matters of observance of the principle of equal treatment in accordance with the Anti-discrimination Act;
- carries out independent inquiries concerning discrimination.

- b) Political, economic and social context for the designated body

The position of the Government in relation to the National Centre for Human Rights can be generally characterised by two approaches, which resulted from the different political composition of the Government in respective election periods. The Government either gave no attention to the functioning and independence of the centre and possible deficiencies in this area or recognised the need to evaluate the setting up and functioning of the centre.

On a long-term and continuing basis, the centre is subject to criticism by NGOs, international human rights bodies and others who are active in the field of human rights, particularly for its insufficient functioning and independence.³⁸⁷ In recent years, these

³⁸⁵ Slovakia, Act No. 365/2004 on Equal Treatment in Certain Areas and Protection against Discrimination and on amending and supplementing certain other laws as amended.

³⁸⁶ Slovakia, Act No 308/1993 on Establishing the Slovak National Centre for Human Rights, as amended (zákon č. 308/1993 o zriadení Slovenského národného strediska pre ľudské práva v znení neskorších predpisov).

³⁸⁷ See, for example, Durbáková, V., Holubová, B., Ivanco, Š., Liptáková, S. (2012), *Hľadanie bariér v prístupe k účinnej právnej ochrane pred diskrimináciou*, (Searching for barriers in access to effective legal protection from discrimination) Košice: Poradňa pre občianske a ľudské práva, pp. 110-112. Available at <https://www.poradna-prava.sk/sk/dokumenty/diskriminacia-na-slovensku-hladanie-barier-v-pristupe-k-ucinnej-pravnej-ochrane-pred-diskriminaciou/>; UN Human Rights Committee (2016), *Concluding Observations of the Human Rights Committee from October 2016*, (CCPR/C/SVK/CO/4), para. 8-9. Available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fSVK%2fCO%2f4&Lang=en. UN Committee on the Elimination of Racial Discrimination (2018), *Concluding Observations of the Committee on the Elimination of Racial Discrimination from January 2018*, (CERD/C/SVK/CO/11/12), para. 7-8. Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD/C/SVK/CO/11-12&Lang=En.

objections have been repeatedly highlighted in recommendations of the UN treaty monitoring bodies and other international human rights institutions.

On 1 June 2011, the Government approved the *Analytical report on the functioning and status of the Slovak National Centre for Human Rights in the context of institutional protection of human rights in the Slovak Republic*.³⁸⁸ This report was the first of its kind ever produced by the Slovak Government and, more generally, the first attempt that has ever been made to monitor and evaluate the functioning of the centre in a relatively complex manner.

Following the findings of the report and further analyses of the potential financial and legal impacts of carrying out fundamental and systemic changes in the setting up and functioning of the centre, the Ministry of Justice prepared a draft of an amendment to the Act on the Centre that was available for further comment from March 2018 onwards. The final proposal of the amendment will be submitted to the Parliament in 2019.³⁸⁹ The amendment is meant to secure the compliance of the centre with the Paris principles that set international standards regarding the functioning of national human rights institutions.

The overall subsidy for the centre in 2018 from the state budget was EUR 565 356. The centre had additional minor income from its partnership in an international project funded from EU sources (EUR 14 965).³⁹⁰ In the last three years the annual budget of the centre has been steady without any significant decrease or increase. The centre does not record what proportion of its overall subsidy is spent on fulfilling its responsibilities as an equality body.³⁹¹

The current financing of the centre from the state budget remains insufficient and in recent years, several UN treaties monitoring bodies have raised this issue.³⁹²

The current mechanism of financing the centre may arguably have a negative impact on its independence. Given that it is the Government that introduces the Act on the State Budget on an annual basis and the Parliament that approves the act, and there are no constitutional or statutory guarantees on minimum budgetary thresholds for the centre or mechanisms that would prevent the possibility of arbitrary (non)allocation of funds to it (which, in practical terms, is in the full and exclusive control of the Government), this mechanism casts doubts on whether the centre can, in principle, be independent from the political powers in office under the legislation and the current mechanisms of approving the centre's annual budgets.

c) Institutional architecture

In Slovakia, the designated body forms part of the body with multiple mandates. Apart from its mandate as a body for the promotion of equal treatment, the centre has a mandate

³⁸⁸ The report is available at: www.rokovania.sk/File.aspx/ViewDocumentHtml/Mater-Dokum-133077?prefixFile=m.

³⁸⁹ The proposed amendment and information about the course of the ongoing legislative process are available at: <https://www.nrsr.sk/web/Default.aspx?sid=zakony/cpt&ZakZborID=13&CisObdobia=7&ID=1264>.

³⁹⁰ Response of the centre of 7 February 2019 to a request for information of 30 January 2019 (on file with the author).

³⁹¹ Response of the centre of 17 June 2019 to a request for information of 12 June 2019 (on file with the author).

³⁹² In its recent concluding observations from January 2018, the UN Committee on the Elimination of Racial Discrimination (CERD) noted with concern the lack of adequate resources for the centre and recommended that the Slovak Government provide it with adequate human, financial and technical resources to enable it to discharge its mandate effectively and independently. UN Committee on the Elimination of Racial Discrimination (2018), *Concluding Observations of the Committee on the Elimination of Racial Discrimination from January 2018*, (CERD/C/SVK/CO/11/12), para. 7-8. Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD/C/SVK/CO/11-12&Lang=En.

as the national human rights institution (NHRI). It was given this mandate by its establishment on 1 January 1994 following the Treaty on the Establishment of the Slovak National Centre for Human Rights between the Government of the Slovak Republic and United Nations.³⁹³ The centre is currently not in full compliance with the principles relating to the status of national human rights institutions for the promotion and protection of human rights (the Paris principles) and continues to be accredited with 'B' status.

There is no specific structure within the centre to address its equality and non-discrimination mandate. The centre had 21 employees in total in 2018. Its multiple mandate as the body responsible for the promotion of equal treatment and as the national human rights institution (NHRI) is not structurally divided within the centre and according to working contracts, all employees of the centre carry out both mandates simultaneously.³⁹⁴

d) Status of the designated body/bodies – general independence

i) Status of the body

The centre has separate legal status, as established by the Act on the Centre. According to the Act on the Centre, the centre is an independent, non-judicial body, subsidised by the state. The governing body of the centre is the executive director, who manages and exercises control over the centre and who is the statutory representative of the centre,³⁹⁵ and the board, which consists of nine independent members. One member is appointed by the President of the Slovak Republic, one member by the Chair of the National Parliament, one member by the Ombudsperson, one member by the Prime Minister of the Government of the Slovak Republic in response to a proposal from NGOs, one member is appointed by the Minister of Labour, Social Affairs and Family and the other four members are appointed by deans of the four law faculties (see Section 3a(1) of the Act on the Centre). Membership of the board is voluntary and the board members are only entitled to reimbursements of their cash expenses (see Section 3a(3) of the Act on the Centre).

The executive director is elected and dismissed by the board upon nomination by the board members. The staff are appointed and dismissed by the executive director.

As regards the financing of the centre, according to the Treaty on the Establishment of the Slovak National Centre for Human Rights between the Government of the Slovak Republic and United Nations, the first two years of its existence were supported by the Voluntary Fund, subsidised by the Government of the Netherlands and by contribution from the Slovak Government. A commitment to the further maintenance of the centre was undertaken by the Slovak Government and the centre is financed by subsidies from state budget.

The Act on the Centre does not deal with the question of to whom the centre is accountable (it only stipulates that the executive director of the centre is accountable to the board and sets out the areas of this accountability, such as the activities of the centre, proper management and bookkeeping, fulfilling the decisions of the board etc).³⁹⁶ Given the fact that the centre is a public institution set up by law, it can be argued that it is accountable to the public (although there is no particular provision contained in the Act on the Centre that would set up mechanisms for implementing this accountability and/or controlling it). In terms of spending finances from the state

³⁹³ Notice of the Ministry of Foreign Affairs of the Slovak Republic no. 29/1995.

³⁹⁴ Response of the centre of 7 February 2019 to a request for information of 30 January 2019 (on file with the author).

³⁹⁵ Slovakia, Act on the Centre, 308/1993, Section 2(1) and (2).

³⁹⁶ See Slovakia, Act on the Centre, 308/1993, Section 3b(4), for more details.

budget effectively, the centre is accountable to the Supreme Audit Office of the Slovak Republic, which controls the management of funds and property of the state.

ii) Independence of the body

Section 2(1) of the Act on the Centre stipulates that the centre is an independent legal entity. However, NGOs and international human rights bodies have questioned the factual independence of the centre in practice.³⁹⁷

e) Grounds covered by the designated body/bodies

The centre has a mandate to deal with all grounds covered by national law, i.e. sex, religion or belief, race, affiliation with nationality (*národnosť*) or an ethnic group, disability, age, sexual orientation, marital status and family status, colour of skin, language, political or other opinion, national or social origin, property, lineage/gender or other status, or the reason of reporting criminality or other anti-social activity, contained in Section 2(1) of the Anti-discrimination Act as well as some other grounds contained in other acts (unfavourable state of health, duties to family, membership of or involvement in a political party or political movement, a trade union or other association).

According to the assessment of the author of this report, the centre does not prioritise any of the covered grounds; a significant number of cases in which the centre provided legal representation before courts or on which it issued legal opinions relate to discrimination in employment on the ground of 'other status' (mostly harassment against an employee by his or her supervising manager) and it is a failure of the centre that it has not sufficiently addressed pressing and widely documented discrimination in Slovak society on the grounds of ethnicity and gender. Given the limited staff and institutional capacity of the centre, prioritisation in dealing with the grounds of discrimination is necessary. However, this is not reflected in the centre's approach.

f) Competences of the designated body/bodies – and their independent exercise

i) Independent assistance to victims

The centre has a duty to provide independent assistance to victims. It receives claims from individuals by post, e-mail and by electronic form as well as in person and generally provides claimants with free legal counselling by assessing whether they were subjected to discrimination based on the received information and providing them with advice about available legal options to address discrimination. The centre can also provide victims with free legal representation in a court proceeding concerning discrimination.

The information available does not allow the author of this report to assess whether this duty is exercised in an independent manner and effectively. Providing assistance to victims is based on private communication between the centre and victims of discrimination and, as such, this information is not publicly available. The centre assists victims in various forms, like deals with complaints, mediates the cases or provides legal representation in court proceedings. In 2018, the centre received 90 complaints where discrimination was claimed and through mediation settled 2 cases of discrimination. In 2018, the centre started to provide representation in one new case of discrimination, overall in 2018, the centre has provided legal representation

³⁹⁷ UN Human Rights Committee (2016), *Concluding Observations of the Human Rights Committee from October 2016*, (CCPR/C/SVK/CO/4), para. 8-9. Available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fSVK%2fCO%2f4&Lang=en. UN Committee on the Elimination of Racial Discrimination (2018), *Concluding Observations of the Committee on the Elimination of Racial Discrimination from January 2018*, (CERD/C/SVK/CO/11/12), para. 7-8. Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD/C/SVK/CO/11-12&Lang=En.

to five victims of discrimination, which can arguably be seen as a result of its insufficient institutional and staff capacities. However, even given its current institutional and staff capacity, the level of its provision of legal representation to victims of discrimination in court proceedings clearly appears to be low comparing to cases the centre dealt with in 2018 and prevalence of discrimination in Slovakia. (For more details see data below in this chapter). It can also be reasonably assumed that the insufficient institutional and staff capacity of the centre may have a negative impact on providing assistance to victims in general.

ii) Independent surveys and reports

The centre has a duty to conduct independent surveys and publish independent reports. In practice, it ranges from publishing an annual report on the observance of human rights including the principle of equal treatment, publishing various analytical materials and conducting surveys concerning discrimination to submitting alternative reports to the international bodies. In 2018, the centre published a research report on the prevalence of racism and xenophobia among young people and as well as a report monitoring the issue of bullying and cyberbullying in schools.³⁹⁸

In recent years, the centre has submitted several alternative reports to the international human rights bodies, particularly to the UN treaty monitoring bodies addressing relevant issues concerning the protection of human rights and protection against discrimination in Slovakia. The reports reflect critically on information provided in the Government periodic reports and according to the assessment of the author of this report can be considered to be independent.³⁹⁹ In 2018, the centre provided particular information to the Office of the United Nations High Commissioner for Human Rights in respect of the recent consideration of Slovakia in the universal periodic review (UPR).⁴⁰⁰

iii) Recommendations

The centre is competent to issue independent recommendations on discrimination issues. In practice, the centre issues the recommendations in its annual reports on the observance of human rights, including the principle of equal treatment, in Slovakia. In addition, it regularly includes recommendations in its reports on surveys, analytical reports or alternative reports for international human rights bodies. Recommendations are primarily addressed to the Government, Government institutions or other state institutions.

The centre has recently formulated and included independent recommendations in its reports submitted to the international human rights bodies as well as in its annual reports on the observance of human rights, including the principle of equal treatment, in Slovakia. According to the assessment of the author of this report, the centre generally addresses relevant issues concerning protection against discrimination in Slovakia and as such can be considered to be independent. However, there are shortcomings in terms of their contextual and analytical quality, which may be a result of the insufficient institutional and staff capacity of the centre.

iv) Other competences

The centre:

³⁹⁸ The reports are available in Slovak at: <http://www.snslp.sk/SnsIpWeb.html#menu=1419>.

³⁹⁹ See, for example, Slovak National Centre for Human Rights (2018), *Individual submission of the Slovak National Centre for Human Rights in respect of the 3rd universal periodic review of Slovakia to the UN Human Rights Council*. Available at http://www.snslp.sk/CCMS/files/UPR_spr%C3%A1va.pdf.

⁴⁰⁰ The summary report of the OHCHR that also includes information from the centre is available at: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/SKindex.aspx> The alternative report of the centre is available at: http://www.snslp.sk/CCMS/files/UPR_spr%C3%A1va.pdf.

- monitors and evaluates the observance of the equal treatment principle and the Anti-discrimination Act;
- gathers and provides information upon request on racism, xenophobia and anti-Semitism in the Slovak Republic;
- prepares educational activities and participates in information campaigns aimed at increasing tolerance in the society; and
- issues expert opinions on the observance of the equal treatment principle under the Anti-discrimination Act, upon requests from natural persons or legal entities or on its own initiative.

g) Legal standing of the designated body/bodies

In Slovakia, the designated body – the Slovak National Centre for Human Rights – has legal standing to:

- bring discrimination complaints (on behalf of identified victims) to court;
- bring discrimination complaints (on behalf of non-identified victims) to court;
- intervene in legal cases concerning discrimination, such as *amicus curiae*.

In accordance with Section 1(3) of the Act on the Centre, the centre has the authority to represent parties in proceedings concerning violation of the principle of equal treatment. The clients are represented by the centre's staff lawyers. In such cases the people represented by the centre do not pay for the legal representation it provides. However, the centre cannot represent victims of discrimination in proceedings before the Constitutional Court. The centre can intervene in legal cases concerning discrimination, such as *amicus curiae*. The centre does not have any litigation strategy; according to the centre, it has a duty as the equality body to treat every client equally and does not give strategic preference to any cases due to their potential impact on society. In 2018, the centre started to provide legal representation in one new case of discrimination. Overall, in 2018, the centre has provided legal representation to five victims of discrimination. The courts issued decisions in two cases litigated by the centre - both were decisions of first instance courts and were not final. In one of these court cases a friendly settlement has been reached among parties and included an apology and compensation for a client of the centre.⁴⁰¹

The Slovak National Centre for Human Rights is authorised by law to join judicial proceedings related to breaches of the principle of equal treatment, either on the side of the claimant or on the side of the defendant. In 2018, the centre joined judicial proceeding as intervener in one case of discrimination. In addition, in cases in which breaches of the principle of equal treatment could violate rights, interests protected by the law or freedoms of a larger or non-specified number of people, or if the public interest could be seriously endangered in some other manner by such a violation, the centre can invoke the protection of the right to equal treatment in its own name. By the end of 2018, the centre had not filed an *actio popularis* in its own name.

The centre continues to provide legal representation to only a small number of persons who have been discriminated against and it is not sufficiently active in improving access to justice for people who have experienced discrimination. According to the assessment of the author of this report, a significant number of the limited amount of cases in which the centre provided legal representation before courts relate to discrimination in employment on the ground of 'other status' (mostly harassment conducted by an employee's supervising manager) and so do not sufficiently address the pressing and widely documented discrimination in Slovak society on the grounds of ethnicity and gender. From this perspective, the case law produced by the centre appears to fall short of its particular strategic relevance in terms of advancing the implementation of anti-discrimination

⁴⁰¹ Response of the centre of 7 February 2019 to a request for information of 30 January 2019 (on file with the author).

legislation in domestic courts, spurring public discussion on the most pressing human rights issues or addressing issues that need legal interpretation.

h) Quasi-judicial competences

In Slovakia, the equality body – the Slovak National Centre for Human Rights – is a quasi-judicial institution.⁴⁰² It has a responsibility to deal with claims of individuals and reach findings on discrimination in individual cases. However, the centre's conclusions in these cases are not legally binding and can only serve as a relevant opinion, which can be presented, for instance, in court proceedings when victims decide to take additional legal steps. The centre monitors how clients make use of its conclusions and when the clients decide to file a lawsuit they usually propose that the centre be engaged in the proceeding as a third party. However, the centre does not monitor the overall impact of its conclusions and opinions on eradicating discriminatory practices or behaviours that the centre has found to be discriminatory.⁴⁰³

i) Registration by the body/bodies of complaints and decisions

In Slovakia, the body registers the number of complaints of discrimination made.

The data are available to the public.

The centre registers the number of discrimination complaints received, including information about the ground and field of discrimination being claimed. These data are published in annual reports on the activities of the centre, which are publicly available on the centre's website.⁴⁰⁴

In 2018, the centre received 90 complaints where discrimination was claimed. Out of this total, the centre found a violation of anti-discrimination legislation in 16 complaints. The grounds of the complaints received were: 6 on age; 7 on ethnic origin; 2 on nationality; 3 on gender; 9 on disability; 1 on sexual orientation; 2 on family status; 2 on political or other opinion; 6 on reporting criminality or other anti-social activity; and 29 on other status. Of the complaints received, 73 concerned labour or similar relations, 9 related to providing goods and services, 4 concerned social security and 1 related to education.⁴⁰⁵

j) Stakeholder engagement

In Slovakia, the designated body does engage with stakeholders as a part of implementing its mandate.

According to the recently available annual report for the year 2017, the centre collaborated with a wide range of public stakeholders including civil society organisations, public bodies, local government entities, trade unions or employee associations and other bodies (e.g. international organisations, universities and schools).⁴⁰⁶

⁴⁰² The issue is a matter of interpretation. The author of this report interprets the competence of the Slovak equality body to hear and consider individual complaints as a quasi-judicial competence, which is why she considers the equality body to be a quasi-judicial body.

⁴⁰³ Response of the centre of 17 June 2019 to a request for information of 14 June 2019 (on file with the author).

⁴⁰⁴ Slovak National Centre for Human Rights (2019), *Ročná záverečná správa o činnosti Slovenského národného strediska pre ľudské práva za rok 2018* (Annual report on the activities of the Slovak National Centre for Human Rights for the Year 2018). Available in English at: http://www.snslp.sk/CCMS/files/2018_Activity_Report_of_the_Slovak_National_Centre_for_Human_Rights.pdf.

⁴⁰⁵ Response of the centre of 7 February 2019 to a request for information of 30 January 2019 (on file with the author).

⁴⁰⁶ For detailed information about the scope of this collaboration with particular stakeholders see Slovak National Centre for Human Rights (2019), *Ročná záverečná správa o činnosti Slovenského národného strediska pre ľudské práva za rok 2018* (Annual report on the activities of the Slovak National Centre for Human Rights for the Year 2018). Available in English at:

k) Roma and Travellers

The centre does not treat Roma as a priority issue. The issue of discrimination against the Roma minority in Slovakia is a part of the centre's overall educational activity concerning protection against discrimination. However, its activities on the prevention of discrimination against the Roma minority do not include litigation of cases of discrimination against Roma, despite its on-going prevalence in Slovakia. In recent years, the centre has provided legal representation in very few cases of discrimination against the Roma minority and has not made use of its competence to initiate public interest lawsuits to challenge structural discrimination of the marginalised Roma minority in education, housing or healthcare. The centre generally does not publicly address or comment on any cases of discrimination against Roma litigated by NGOs and publicly presented in media. In 2018, the centre had not been engaged in any litigation concerning discrimination of Roma at all, neither by providing legal representation to affected Roma, nor through any other legal intervention in pending cases in this regard in Slovakia (such as providing *amicus curiae*).⁴⁰⁷ However, the centre gives particular attention to discrimination against the Roma minority in various areas of public life in its annual report on the observance of human rights as well as in alternative reports for international human rights bodies and addresses recommendations in this regard to the state authorities responsible.⁴⁰⁸

http://www.snslp.sk/CCMS/files/2018_Actvity_Report_of_the_Slovak_National_Centre_for_Human_Rights.pdf.

⁴⁰⁷ Response of the centre of 21 June 2019 to a request for information of 18 June 2019 (on file with the author).

⁴⁰⁸ For instance, in its recent report on the Observance of Human Rights Including the Principle of Equal Treatment in the Slovak Republic for the Year 2018, the centre addressed a number of relevant recommendations to the Government authorities and municipalities concerning the right of Roma for adequate housing and right of Roma children to quality education without segregation. The recommendations were based on a concise analysis the situation in these areas including case studies from concrete localities. The report is available at: <http://www.snslp.sk/#page=2426>.

8 IMPLEMENTATION ISSUES

8.1 Dissemination of information, dialogue with NGOs and between social partners

- a) Dissemination of information about legal protection against discrimination (Article 10 Directive 2000/43 and Article 12 Directive 2000/78)

Some information about legal protection against discrimination (including in English) is contained on the website of the Slovak National Centre for Human Rights (the equality body, www.snspl.sk). The Ministry of Labour, Social Affairs and Family runs a website that provides a wider range of information concerning the protection from discrimination for the general public (e.g. an overview of anti-discrimination legislation, forms and grounds of discrimination, instructions on protection against discrimination). The website also includes information on how to combat discrimination.⁴⁰⁹ In 2018, the Ministry of Labour, Social Affairs and Family announced a call for project proposals specifically aiming at the prevention and elimination of all forms of discrimination. The call aims to support a wide range of activities including educational and awareness-raising activities on the legal protection from discrimination. The call is financed by the EU.⁴¹⁰

- b) Measures to encourage dialogue with NGOs with a view to promoting the principle of equal treatment (Article 12 Directive 2000/43 and Article 14 Directive 2000/78)

In 2010, the Council of the Government of the Slovak Republic for Human Rights, National Minorities and Gender Equality was set up as a permanent advisory body to the Government of the Slovak Republic.⁴¹¹ According to its statute, the Council is a permanent expert, advisory, coordinating and consultative body to the Government in the field of human rights, including the rights of national minorities and ethnic groups and in the field of pursuing the principle of equal treatment and the principle of gender equality.⁴¹² The Council has 40 members⁴¹³ and unites representatives of the Government, regional and local bodies, public human rights institutions, NGOs, academic institutions and vice-chairpersons of the Council's committees. The Council has seven committees, which cover issues of national minorities and ethnic groups, people with disabilities, gender equality, children and youth, research and education in the field of human rights and development, the prevention and elimination of racism, xenophobia, anti-Semitism and other forms of intolerance, and the rights of lesbians, gays, bisexual, transgender and intersex persons.⁴¹⁴

The Council and its mechanisms are undeniably some kind of forum for expert discussion, networking and exchange of opinions between the Government, NGOs and academia, representatives of local and regional bodies, human rights institutions and other stakeholders involved in the protection of human rights including non-discrimination. On the other hand, its structure is rather complicated and 'all-encompassing', which is a barrier *per se* for its efficient functioning. It does not have clear and flexible mechanisms for assessing legislation that is under preparation concerning human rights (including the right to non-discrimination) and giving opinions by the Council thereon (including a clear and efficient mechanism for entering the legislative process), and so there have been many

⁴⁰⁹ The website is available in Slovak at <http://www.gender.gov.sk/diskriminacia/>.

⁴¹⁰ Response of the Ministry of Labour, Social Affairs and Family of 14 March 2019 to a request for information of 4 March 2019 (on file with the author).

⁴¹¹ Slovakia, Act on the Organisation of the Activities of the Government and on the Organisation of the Central State Administration, 575/2001, Section 2(3). The website of the Council of the Government: www.radavladyp.gov.sk/.

⁴¹² Slovakia, Statute of the Council of the Government of the Slovak Republic for Human Rights, National Minorities and Gender Equality, Article 2. The statute is available at <http://www.radavladyp.gov.sk/dokumenty-rady/>.

⁴¹³ The names of the members are available at <http://www.radavladyp.gov.sk/zlozenie-rady-vlady-slovenskej-republiky-pre-ludske-prava-narodnostne-mensiny-a-rodovu-rovnost/>.

⁴¹⁴ See Slovakia, Statute of the Council of the Government of the Slovak Republic for Human Rights, National Minorities and Gender Equality, Article 6(1) and (2).

instances when the Council did not address human rights and equality issues of critical importance. Similarly, there is no mechanism for monitoring the compliance of the Government and its ministries with the recommendations of the Council and its committees. Furthermore, it can be said that the Government does not take the recommendations of the Council very seriously and that it is often a forum for formal discussion only.

- c) Measures to promote dialogue between social partners to give effect to the principle of equal treatment within workplace practices, codes of practice, workforce monitoring (Article 11 Directive 2000/43 and Article 13 Directive 2000/78)

Upon an official request by the author of this report for information on measures that the Slovak Republic carried out in 2018 in relation to social partners with the aim of implementing the principle of equal treatment pursuant to EU directives, the Ministry of Labour, Social Affairs and Family noted that social partners are engaged in a range of Government advisory bodies concerning the protection of human rights including the Council of the Government for Human Rights, National Minorities and Gender Equality. In addition, they are engaged in the Administrative and Social Council of the Slovak Republic working as an initiative, consultative and negotiating body of the Slovak Government, employers and social partners and so, through this institutional platform, social partners are informed about all legislative or non-legislative materials concerning non-discrimination and equal treatment.⁴¹⁵

In February 2018, The National Labour Inspectorate made an agreement with two social partners and members of the tripartite – Confederation of Labour Unions and Association of Employers Unions. The agreement focuses mostly on issues of safety and health protection at work, labour relations and illegal work. It also includes joint realisation of awareness-raising and preventive activities.⁴¹⁶

- d) Addressing the situation of Roma and Travellers

In 2001, the Office of the Plenipotentiary of the Government of the Slovak Republic for Roma Communities was established. The Plenipotentiary was directly subordinate to the Prime Minister and their tasks were to 'propose, coordinate and control activities aiming at solving problems of the Roma minority and, following approval from the Government, to carry out systemic solutions to achieve equal status in society for citizens belonging to the Roma minority'.⁴¹⁷ In June 2012, the Plenipotentiary, albeit still remaining an advisory body of the Government and officially accountable to it, became de facto subordinate to the Minister of Interior with whom the Plenipotentiary is supposed to 'coordinate her/his activities'.⁴¹⁸ At the same time, the Office of the Plenipotentiary also moved to the Ministry of Interior.⁴¹⁹ The subsuming of the office into the Ministry of Interior, apart from being unprincipled and non-systemic (the situation of Roma communities requires systemic solutions in all areas of life including employment, housing, infrastructure, education, health etc. where the Ministry of Interior has no powers), also has a very negative and dangerous flavour, as part of the Ministry of Interior's remit is to deal with 'security', criminal proceedings and with the repressive side of the exercise of state power in general.

⁴¹⁵ Response of the Ministry of Labour, Social Affairs and Family of 14 March 2019 to a request for information of 4 March 2019 (on file with the author).

⁴¹⁶ Response of the Ministry of Labour, Social Affairs and Family of 14 March 2019 to a request for information of 4 March 2019 (on file with the author).

⁴¹⁷ See www.minv.sk/?vznik_uradu. The original statutes are not available.

⁴¹⁸ See Article 2(3) of the Statutes of the Plenipotentiary of the Government of the Slovak Republic for Roma Communities, approved by a resolution of the Government of the Slovak Republic No 308 of 27 June 2012, available at: www.minv.sk/?statut_rk.

⁴¹⁹ See Article 3(4) of the Statutes of the Plenipotentiary of the Government of the Slovak Republic for Roma Communities. The link to the website of the current Plenipotentiary is www.minv.sk/?romske-komunitu-uvod.

8.2 Compliance (Article 14 Directive 2000/43, Article 16 Directive 2000/78)

a) Mechanisms

The Anti-discrimination Act set out in its transitory provisions a general clause which states that employers and relevant trade union bodies that conclude collective agreements are obliged to bring the provisions of collective agreements into compliance with the principle of equal treatment by 1 January 2005. Employers have the same obligation to adopt the provisions into their internal rules. This means that after January 2005, no collective agreements and internal rules of employment contrary to the Anti-discrimination Act may be legally applied. This provision of the Anti-discrimination Act does not mention statutes or internal rules of other professions or independent occupations, but this does not mean that the duty to follow the principle of equal treatment does not apply to these. It is guaranteed that any normative act, registered by a state agency (internal regulations of associations, of independent professions, workers' and employers' organisations and of profit-making organisations, etc.) must not be contrary to the principle of equality (and more generally, not contrary to the existing laws of higher legal force). If a bylaw underlying a registration procedure is in breach of this principle, the registration body must reject it.

b) Rules contrary to the principle of equality

There are still some laws in force, particularly in relation to social security, that are discriminatory, for example: Act 383/2013 on Childbirth Allowance and on Allowance for More Concurrently Born Children (see section 3.2.7 of this report); Section 4(3) of Act 571/2009 on Parental Care Allowance; Section 12a of Act 600/2003 on Child Allowance; and Section 141 of the Labour Code, which grants some labour-related benefits that are discriminatory on the grounds of family and marital status (see section 4.5 of this report). In addition, Act 417/2013 on Aid in Material Need contains a provision (Section 10(3)) that is indirectly discriminatory on the ground of ethnicity (against the Roma) and constitutes forced labour (see section 3.2.6 above for more detail). There are also documented municipality binding regulations determining school district areas in a way that concentrates Roma children in one school and thus contribute to their segregation in education.⁴²⁰

⁴²⁰ The practice has been challenged by an *actio popularis* lawsuit against the responsible state authorities, which was brought before court in January 2016 by the human rights NGO Centre for Civil and Human Rights in proceedings pending before the District Court in Prešov, file n. 29C14/2016. The NGO Centre for Civil and Human Rights also documented such cases in towns Vranov nad Topľou and Prešov.

9 COORDINATION AT NATIONAL LEVEL

In accordance with the Act on the Organisation of the Activities of the Government and on the Organisation of the Central State Administration,⁴²¹ the Ministry of Labour, Social Affairs and Family is the central state administration body for 'gender equality and equal opportunities and for the coordination of state policies in this field'.⁴²²

Since 1 September 2015, the Ministry of Justice has been responsible for coordinating the fulfilment of human rights tasks and provides for the development and implementation of state policies in the field of human rights.⁴²³

Following the adoption of the 'National Strategy for the Protection and Promotion of Human Rights in the Slovak Republic' in 2015,⁴²⁴ on 13 January 2016, the Slovak Government adopted the 'Action Plan to Prevent All Forms of Discrimination 2016-2019'.⁴²⁵ On the same day, the Government also adopted the 'Action Plan to Prevent and Eliminate All Forms of Racism, Xenophobia, Anti-Semitism and Other Forms of Intolerance 2016-2018'.⁴²⁶ In 2015, the draft 'Action Plan for LGBTI People for 2016-2019' was also prepared by the Ministry of Justice in collaboration with the LGBTI activist community.⁴²⁷ However, as of the end of 2018, this action plan had still not been adopted. On 26 October 2016, the Government adopted the 'Action Plan on the Protection of Persons Belonging to the National Minorities and Ethnic Groups 2016 – 2020'.⁴²⁸

The Government's policy concerning the integration of Roma living in marginalised communities is framed by the 'Strategy of the Slovak Republic for Roma Integration to 2020', which was adopted on 11 January 2012.⁴²⁹ The strategy is an 'open document' to be supplemented by action plans, which specifies policies and measures to be implemented in selected areas. In 2018, the second set of updated action plans were drafted, but they had not yet been adopted by the Slovak Government by the end of 2018.

⁴²¹ Slovakia, Act on the Organisation of the Activities of the Government and on the Organisation of the Central State Administration, 575/2001.

⁴²² Slovakia, Act on the Organisation of the Activities of the Government and on the Organisation of the Central State Administration, 575/2001, Section 15(1)(h).

⁴²³ By the amendment to the Act on the Organisation of the Activities of the Government and on the Organisation of the Central State Administration, No 172/2015.

⁴²⁴ Available at: <https://rokovania.gov.sk/RVL/Material/11579/1>.

⁴²⁵ *Akčný plán predchádzania všetkým formám diskriminácie na roky 2016-2019*. Available at: http://www.gender.gov.sk/diskriminacia/files/2016/09/AP_ADZ-.pdf.

⁴²⁶ *Akčný plán predchádzania a eliminácie rasizmu, xenofóbie, antisemitizmu a ostatných foriem intolerancie na roky 2016 -2018*, available at: <https://rokovania.gov.sk/RVL/Material/12583/1>.

⁴²⁷ *Akčný plán pre LGBTI ľudí na roky 2016-2019*.

⁴²⁸ *Akčný plán ochrany práv osôb patriacich k národnostným menšinám a etnickým skupinám na roky 2016 – 2020*. Available at: <https://rokovania.gov.sk/RVL/Material/21551/1>.

⁴²⁹ Slovakia (2012) 'Strategy of the Slovak Republic for the Integration of Roma to 2020'. Available at: <https://rokovania.gov.sk/RVL/Material/8177/1>.

10 CURRENT BEST PRACTICES

A national project of health mediators based in marginalised Roma communities, entitled 'Healthy Communities' is aimed at improving the access of marginalised Roma communities to healthcare. It currently employs 264 health mediators mostly of Roma origin (the mediators mostly come from the communities) who assist people from marginalised Roma communities with everyday health-related situations. In 2018 this project introduced an additional pilot initiative and employed six Roma health mediators working directly in maternity and paediatric wards of selected hospitals in the vicinity of marginalised Roma communities in eastern Slovakia. They carry out mediation and awareness-raising work as well as providing psychosocial support for Roma women and children in hospitals.

In July 2018, the Office of the Plenipotentiary for Roma Communities launched a national project on the support of preschool education of children from marginalised Roma communities, which aimed to increase engagement of Roma children in preschool education. The project gives municipalities an opportunity to apply for additional funds for employing teachers, teaching assistants or other educational staff in kindergartens. It specifically includes an adoption of temporary equalising measure towards the Roma minority in Slovakia. It is based on preferential treatment of persons of Roma ethnic origin for jobs as teachers in preschool education. The adoption of this temporary measure has been carried out in consultation with the Slovak National Centre for Human Rights as an equality body.⁴³⁰

Slovak NGO Iniciatíva Inakosť conducted the largest survey to date on the situation of LGBT people in the country and in May 2018 published the results. The survey collected responses from 2 088 LGBT people, over the age of 15. More than 80 % considered prejudice, stereotype, misunderstanding and ignorance as the most serious problem in their lives. Many reported low self-confidence, anxiety, depression and suicidal thoughts and 40 % had experienced discrimination. On a positive note, the survey revealed that LGBT people face less rejection by their families than previously thought. More than 80 % of parents were supportive of their children after they had come out and their relationship did not change. Despite that, LGBT people hiding their relationship from the family was still identified as widespread.⁴³¹

The Diversity Charter is a voluntary initiative supported by the European Commission that promotes the dissemination and sharing of diversity management principles, good practice and experience in EU countries. In Slovakia, the charter is administered by the Business Leaders Forum and Pontis Foundation. The number of employers that signed the charter and committed themselves to support diversity in the workplace has been growing and in December 2018 reached 50 signatories, mostly business companies, but also public institutions and non-governmental organisations. In 2018, the administrators of the initiative actively dealt with a range of topics such as prejudices, promoting women's career development and mental health in the workplace as well as issuing recommendations for companies on the employment of marginalised Roma community and the inclusion of LGBT people.⁴³²

⁴³⁰ Information about the project is available at https://www.minv.sk/?spravy_rk&sprava=projekt-na-inkluziu-romskych-deti-v-skolkach-uz-zamestnava-romov.

⁴³¹ Iniciatíva Inakosť (2018) *Annual review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex people in Slovakia covering a period of January to December 2018*. Available at: <https://www.ilga-europe.org/sites/default/files/slovakia.pdf>. The main results of the survey are available in English at: <http://docs.inakost.sk/Slovak-National-LGBT-Survey-2017.pdf>.

⁴³² Business Leaders Forum (2018) *Programme report 2018 of the Diversity Charter Slovakia*. Available at: https://www.chartadiverzity.sk/wp-content/uploads/2019/03/T_013_charta_diverzity_programova_sprava_SK_web.pdf.

11 SENSITIVE OR CONTROVERSIAL ISSUES

11.1 Potential breaches of the directives (if any)

- The protection against discrimination guaranteed under the Anti-discrimination Act is only provided in connection with 'rights of persons provided for under special laws'. This is the problem that in some areas (like social advantages, access to goods and services) the rights of the persons would be provided by generally binding legal enactments other than laws (for example, Government decrees, ministerial ordinances, generally binding ordinances of self-governing bodies or municipalities etc.). See mainly sections 2.4(b) and 3.2.7 above for further details.
- The definition of harassment raises a few questions regarding full compliance with the directives. See section 2.4 for more details.
- The judicial interpretation of indirect discrimination is not in compliance with interpretation given by the CJEU case law. See section 2.3 for more details.
- The definition of disability in labour and social security legislation is very restrictive compared to the definition developed by the Court of Justice of the EU in *Skouboe Werge and Ring*.⁴³³ See section 2.1.1 for more details.
- If contract work falls outside legal relations covered by the Labour Code, it is probably not covered by anti-discrimination provisions. See section 3.2.1 for details.
- Act 417/2013 on Aid in Material Need contains a provision (Section 10 (3)) that reduces the payment of the allowance in material need for each adult person who does not carry out some kind of 'work in the public interest' or similar works in amount of at least 32 hours per month. The provision appears to be indirectly discriminatory on the ground of ethnicity (against the Roma). See section 3.2.6 for more detail.
- Act 383/2013 on Childbirth Allowance and on Allowance for More Concurrently Born Children clearly appears to be discriminatory towards Roma women. See section 3.2.7 for more details.
- Section 4 (3) of Act 571/2009 on Laws on Parental Care Allowance and Article 12a of Act 600/2003 on Child Allowance appear to be discriminatory towards Roma. See section 3.2.7 for more details.
- The Labour Code still contains a few specific provisions that are discriminatory in relation to sexual orientation. These concerns paid leave in special personal circumstances. See section 4.5 for more details.
- Claiming invalidity of an employment termination can only be done within a period of two months from the date of the termination of the employment relationship. This is certainly a barrier to seeking effective remedies in cases of discriminatory dismissals. See section 6.1(b).
- The conditions of job termination for university professors (when they reach 70 years of age) and for judges and prosecutors (when they reach 65 years of age) are very likely in conflict with CJEU case law. See sections 4.7.4(c) and (f) of this report for more details.
- The way in which the courts have dealt so far with cases where financial compensation for non-pecuniary damage was sought indicates that, with regard to this type of compensation, the sanctions are not effective, proportionate and dissuasive. See section 6.5(c) for more details.
- Although the Slovak National Centre for Human Rights fulfils its tasks stemming from EU and national law on paper, it appears to have serious problems with efficiency, transparency, independence and in general with its overall performance. See section 7 for more details.

⁴³³ CJEU, Joined Cases C-335/11 and C-337/11, *HK Danmark, acting on behalf of Jette Ring v Dansk almennyttigt Boligselskab* (C-335/11), and *HK Danmark, acting on behalf of Lone Skouboe Werge v Dansk Arbejdsgiverforening, acting on behalf of Pro Display A/S, in liquidation* (C-337/11), judgment of 11 April 2013.

- The segregation of Roma children in education remains a very serious problem. There is no definition of segregation in education in domestic legislation that would follow from the international human rights law. See section 3.2.8 for further details.
- Act 308/1991 on Freedom of Religious Belief and the Status of Churches and Religious Societies may be discriminatory on the ground of religion for members of certain religions or religious societies, since it significantly advantages registered churches and religious societies with regard to the legal and economic environment in which they operate. See section 2.1.1 for more details.
- The formulation in the ADA 'in conjunction with special laws' may fall short of requirements set by with directives, since it may potentially exclude goods and services (including housing) provided on the basis of legal acts of lower legal force than laws (e.g. governmental regulations or ordinances of ministries) or generally binding regulations of municipalities or self-governing regions.

11.2 Other issues of concern

The key issues of concern with regards to the implementation and practical application of the anti-discrimination directives on the national level are the following:

- Barriers to access to courts and to justice in general.
- Lack of proper knowledge of anti-discrimination legislation by legal professionals (including those in decision-making positions) and by decision-makers in general, discriminatory attitudes and lack of training.
- The application of reversed burden of proof by domestic courts in anti-discrimination court proceedings continues to fall short of a legal consistency and is often not in compliance with CJEU case law.
- Extreme reluctance of domestic courts to award financial compensation for non-pecuniary damages; if compensation is awarded, it is generally symbolic.
- Courts' interpretation of the necessity only for individuals to submit claims, which undermines the standing of *actio popularis*.
- Organisations and the Slovak National Centre for Human Rights can represent persons affected by discrimination in civil proceedings, but cannot represent them before the Constitutional Court. See sections 6.2(a) for more details.
- Existence of racial prejudices among judges influencing their decision making in cases of racial discrimination and lack of programmes to increase their sensitivity to the issues involved.
- Lack of case law.
- Deficiencies in the registration of cases and decisions on discrimination by courts, with statistics thus being totally inaccurate and insufficient.
- The concept of the shift in the burden of proof only applies to judicial proceedings (and not to administrative proceedings carried out, for example, by labour inspectorates or offices of the Slovak Trade Inspectorate). This makes it almost impossible for administrative bodies that are formally authorised to identify and sanction breaches of the principle of equal treatment to carry out their responsibilities in the field of equality efficiently. See section 6.3 for more details.
- Lack of data and statistics connected to discrimination and its grounds.
- Lack of effectiveness in the functioning and independence of the equality body.
- Lack of effective implementation of public policies in the field of anti-discrimination.
- Lack of mainstreaming of the principle of non-discrimination and lack of coordination among public bodies and institutions responsible for non-discrimination.
- On-going reluctance of the Government to adopt the 'Action Plan for LGBTI People for 2016-2019', drafted by the Ministry of Justice in 2015.
- Lack of resources invested by the Government into non-discrimination, lack of systemic support of NGOs by the Government.
- The system of education not sufficiently integrating the principles and values of human rights, non-discrimination and multiculturalism.

- Lack of commitment and interest on the side of politicians in the values of human rights and non-discrimination.
- A very high level of occurrence and tolerance of racism and discriminatory attitudes in society at large.
- No effective policies providing for the transition from a segregated to an inclusive educational system and a lack of material, financial and human resources for mainstream schools to ensure inclusive education.
- Increased public support for far-right policies; accession of the far-right extremist party National Party – Our Slovakia to the Slovak Parliament after the elections in March 2016.
- Increased public support for extremist ideas and policy regimes disregarding democratic values including the protection of human rights, particularly among young people; inability of the school system to sufficiently address these issues.
- Racist political discourse among politicians against ethnic minorities, particularly Roma, Muslims and non-citizens.

12 LATEST DEVELOPMENTS IN 2018

12.1 Legislative amendments

There have been no amendments to anti-discrimination legislation in 2018.

12.2 Case law

Name of the court: The Regional Court in Košice

Date of decision: 7 February 2018

Name of the parties: *V.P. v. Town of Spišská Nová Ves*

Reference number: 9Co/259/2017

Address of the webpage:

<https://www.poradna-prava.sk/sk/dokumenty/rozsudok-odvolacieho-sudu-v-pripade-diskriminacie-romskej-zeny-v-pristupe-k-zamestnaniu/>

Brief summary: The case was decided by the appeal court, which in its decision of 7 February 2018 confirmed the first instance court decision that a Roma woman had been discriminated against in access to employment.

In 2011, the claimant sued the town of Spišská Nová Ves ('the town') for discriminating against her by not selecting her for one of three vacant positions of terrain social workers, financed by the Social Development Fund. When compared with the claimant, the persons selected for the positions were less qualified, had less experience with terrain social work and less training, did not speak the Roma language, and were of non-Roma origin. Experience with terrain social work, speaking Roma language and being of Roma origin were deemed to be advantages in the selection process (although the latter two were listed as advantages by the Social Development Fund only). She also pointed out that during the job interview other employees who were not members of the selection commission interfered, for example, to ask her questions.

In 2012, the District Court in Spišská Nová Ves dismissed the complaint as manifestly ill-founded and its decision was confirmed in 2013 by the Regional Court in Košice. The claimant subsequently lodged a complaint to the Constitutional Court. On 1 December 2015, the Constitutional Court ruled that the regional court had violated the complainant's right to a fair trial as well as her right to an effective remedy. It quashed the regional court decision and ordered the national general courts to deal with the case again. The Regional Court in Košice subsequently quashed the first instance court decision from 2012 and the case returned before the District Court in Spišská Nová Ves,⁴³⁴ which, on 23 March 2017, ruled that the respondent discriminated against the claimant on the ground of her Roma ethnic origin and ordered the respondent to send her a written apology, to pay non-pecuniary damages to the amount of EUR 2 500 and to refund 50 % of her legal costs. The court partially dismissed the claim for non-pecuniary damage, as the claimant had requested a total amount of EUR 5 000.⁴³⁵ Both the respondent and the claimant have appealed the decision. The claimant has appealed the parts of the decision whereby the district court partially dismissed her claim for non-pecuniary damage and awarded her only 50 % of her legal costs.

On 7 February 2018, the Regional Court in Košice fully upheld the decision of the district court in all parts. It confirmed that the respondent discriminated against the claimant on the ground of her Roma ethnic origin and the respondent is obliged to send her a written apology, to pay non-pecuniary damages to the amount of EUR 2 500 and to refund 50 % of her legal costs. The regional court reiterated the conclusions of the first instance court. It concluded that the respondent did not submit any evidence proving that he did not discriminate against the claimant. In addition, he did not provide any reasonable arguments why the advantages listed by the Social Development Fund - speaking Roma

⁴³⁴ Decision of the Regional Court in Košice, No 9 Co 54/2016 – 462, 24 August 2016.

⁴³⁵ Decision of the District Court in Spišská Nová Ves, No 8 C 268/2016 – 523, 23 March 2017.

language and being of Roma origin - were not included in the selection process set by the respondent. The court concluded that the respondent did not remove doubts about the transparency of the entire selection process.

The regional court also fully complied with the reasoning of the court of the first instance concerning financial satisfaction for the claimant. It concluded that the court of the first instance took into account all the circumstances relevant for assessing financial compensation and considered the amount of EUR 2 500 to be adequate.

The decision of the regional court is final and cannot be appealed against.

The legal representation of the claimant was supported by the Slovak NGO Centre for Civil and Human Rights (Poradna) within its strategic litigation programme.

Name of the court: The Regional Court in Prešov

Date of decision: 20 March 2018

Name of the parties: *B.C. and others v. Town of Sabinov and the Ministry of Transport and Construction of the Slovak Republic*

Reference number: 13 Co 38/2017

Address of the webpage:

<https://obcan.justice.sk/infosud/-/infosud/i-detail/rozhodnutie/000da3d2-a41f-4fb9-b469-3760918f4d16%3Ab2e5d9d7-e6e6-43c5-af46-aac5bb1ebcb5>

Brief summary: The claimants of a Roma ethnic minority in 2007 sued the town of Sabinov for illegally moving them out of rental apartments owned by the town in a central area to new rental apartments of a lower standard, built by the town outside the built-up areas and far from town infrastructure. The claimants pointed out that the town had only moved tenants of Roma ethnic origin to the apartments of lower standard, which led to their segregation. They simultaneously sued the Ministry of Transport and Construction of the Slovak Republic ('the Ministry of Transport') for subsidising this town building project despite its discriminatory nature and for not preventing the segregation of Roma tenants. In October 2012, the District Court in Prešov ruled that the defendants had breached the principle of equal treatment, and emphasised the segregation component, a breach of the duty to adopt measures to prevent discrimination, a need for a strict scrutiny test in case of a 'suspicious criterion' consisting of ethnicity, and the outdated concept of formal equality and awarded to each claimant financial compensation of EUR 1 000 (dismissing the rest of their claims). However, following an appeal by the defendants, the claimants' case was fully dismissed by the Regional Court in Prešov several times, lastly in March 2014. The legal representative of the Roma claimants referred the case to the Supreme Court of the Slovak Republic, which (in April 2017) overturned the decision of the regional court and referred the case back to it for further proceedings.⁴³⁶

The regional court confirmed the decision of the first instance court from October 2012 and fully agreed with its reasoning. In line with the legal opinion of the higher Supreme Court, the regional court concluded that only Roma were moved to rental apartments in a segregated area of town, so they were treated differently from the other inhabitants and thus faced discriminatory treatment on the ground of their ethnic origin, for which the town is responsible.

The regional court again repeated that the claimants had been entitled to claim the rights protected by the anti-discrimination laws, even though they did not claim that the termination of their rental agreements by the town was illegal. According to the court it is up to the claimants to choose which legal measures of protection of their rights they use.

The regional court further stated that implementation of anti-discrimination legislation by state authorities and municipalities in real life was insufficient. In this context the Ministry

⁴³⁶ Decision of the Supreme Court of the Slovak Republic, No. 5 Cdo 18/2015 – 202, 19 April 2017.

of Transport as a state authority has the duty to protect human rights not only in theory, but also in practice. It has to respect all the obligations set by the international treaties. According to the court, the Ministry of Transport was obliged to examine circumstances under which the subsidy was supposed to be used in a broader context, and consider whether using the subsidy eventually led to the segregation of the Roma minority. In line with the decision of the Supreme Court, the regional court pointed out the positive obligation of the state authorities to prevent discrimination.

As for the amount of non-pecuniary damage, the regional court concluded that the amount of EUR 1 000 awarded to each of the eight claimants is adequate for the violations that occurred.

The claimants in this case have been legally represented by a lawyer cooperating with NGO Via Iuris. The decision is final.

Name of the court: The Constitutional Court of the Slovak Republic

Date of decision: 1 August 2018

Name of the parties: *Poradňa pre občianske a ľudské práva (Centre for Civil and Human Rights) v. District prosecution Prešov* in the proceeding file no. Pd 267/16/7707, *Regional prosecution in Prešov* in the proceeding file no. Kd 78/17/7700 and *General prosecution of Slovak Republic* in the proceeding file no. VI/2 Gd 411/17/1000-9

Reference number: IV. ÚS 435/2018-13

Address of the webpage:

<https://www.ustavnysud.sk/vyhľadavanie-rozhodnuti#!DecisionsSearchResultView>

Brief summary: In July 2016, the town of Prešov adopted a binding regulation on providing social housing in rented flats in its property. One of the regulation's paragraphs gives tenants the ability to swap flats with each other upon the mayor's agreement, but only within their own neighbourhood. In one of these neighbourhoods, there is a significant proportion of Roma inhabitants.

A claimant – a local human rights NGO - challenged this paragraph at a district prosecution office arguing that it constitutes indirect discrimination of Roma tenants living in the given town area as it effectively prevents them from swapping their flats with tenants from other town areas. As such, it contributes to maintaining their residential segregation and ghettoization.

District and subsequently regional and general prosecutions dismissed the claimant's complaint and as a result, in May 2018 the claimant turned to the Constitutional Court arguing the violation of their right to judicial and other legal protection and right to fair trial guaranteed by the Slovak Constitution and European Convention on Human Rights. In particular, the claimant argued that the prosecution offices did not duly investigate the complaints and did not take into account its legal argumentation, which violated the principle of equality of legal arms and the decisions of the prosecution offices were arbitrary.

The Constitutional Court dismissed the claimant's constitutional complaint as manifestly ill-founded. In its decision it acknowledged that the public prosecution offices could have dealt with the argumentation of the claimant regarding indirect discrimination more in-depth. However, at the same time it stated that the general prosecution, jointly with its subordinate prosecution offices, sufficiently substantiated their decisions. It essentially concluded that the prosecution offices handled the claimant's complaint in a way that is constitutionally acceptable.

The Constitutional Court also disregarded the claimant's argument that the failure of the prosecution offices to duly investigate its complaints also violated their right under Article 6 of the International Convention on the Elimination of Racial Discrimination imposing on the State Party the obligation to assure effective protection and remedies against any acts

of racial discrimination contrary to the Convention. It concluded that the claimant is a legal entity and does not have ethnic origin that could set a basis for racial discrimination and violation of its rights under the given article of the Convention.

Name of the court: The District Court in Malacky

Date of decision: 17 May 2018

Name of the parties: *X.Y. joined by the third-party European Roma Rights Centre against elementary school in Plavecký Štvrtok and Ministry of Education of the Slovak Republic*

Reference number: 5C/212/2014

Address of the webpage: not published

Brief summary: In 2014, the claimant represented by his father sued the elementary school in Plavecký Štvrtok ('the school') for discriminating against him on the ground of his Roma ethnic origin because he had been placed in a special class for intellectually disabled children. The claimant also sued the Slovak Republic represented by the Ministry of Education of the Slovak Republic ('the ministry') for indirect discrimination: he claimed the state policy of placing Roma children into special classes and schools to be discriminatory. He also claimed that his right to private life guaranteed by Article 8 of the European Convention of Human Rights had been violated by both defendants. He asked the court to state that he had been discriminated against on the ground of his Roma ethnic origin and to order the defendants to pay him for a loss of financial income in his professional career due to his lower education and to provide him with an apology.

The claimant was placed in a so-called 'zero grade' classroom⁴³⁷ attended only by Roma children. After that year, he was placed in a first-grade regular classroom of the school. Following a psychological assessment and the consent of his parents he was then placed in a special class for intellectually disabled children with reduced curricula. Subsequent psychological assessments were made in the following years that confirmed the claimant's intellectual disability and recommended that he continued in the special class. In 2011, the claimant's parents requested that the assessment be made by an independent psychologist and a pedagogue specialised to deal with children with intellectual disabilities. The professionals both assessed that the claimant's intellectual potential was normal (he did not have an intellectual disability) although he had some learning difficulties. In this regard they recommended that he be placed in a lower grade regular classroom with individual curricula or in a special class with expanded curricula, so that he could achieve lower secondary education.

The District Court in Malacky dismissed the claim in all parts. It held that the claimant did not prove that he had been discriminated against. The court did not find the school responsible, as it only followed existing legislation. According to the court, the school could not influence the current domestic legislation and the claimant's assessed abilities. The court did not agree with the claimant that his psychological assessment was biased as it did not take into the account the fact that the claimant grew up in Roma family whose first language was Roma with a west Slovakian dialect and that his knowledge of Slovak was poor. According to the court it has been proved during the proceedings that the claimant could not speak Roma language and had a proper knowledge of Slovak language.

The court also dismissed a claim that his placement in 'zero grade' and special classes constituted segregation. According to the court, the sued school is a school attended only by Roma, so no segregation can occur. The court further noted that there are no discriminatory reasons for placing the claimant into the zero grade and special classes. The court admitted that there are serious problems in providing education to the Roma minority

⁴³⁷ 'Zero-grade' classes are classes within primary schools created for children 'from socially disadvantaged backgrounds for whom it can be assumed that their development will equalise by placing them in zero-grade classes' and for children who 'on reaching the age of six do not have the capacity for school attendance and come from socially disadvantaged backgrounds'. Although formulated seemingly neutrally, these measures appear to have been aimed particularly at Roma children, and it is almost exclusively Roma children who are placed in such classes.

in Slovakia, which have been confirmed by many international institutions and the ombudsperson, but it does not mean that there had been discrimination in the claimant's specific case. The decision of the district court is not final and has been appealed.

Trends and patterns in 2018 in cases brought by Roma

The type and number of cases brought by Roma depend on the existence and available resources of NGOs active in the relevant field; cases where Roma would access courts by themselves, without the assistance of NGOs or the Slovak National Centre for Human Rights, are extremely scarce (which is a good indicator of access to justice for people of Roma origin). There are no official figures available as far as cases brought before courts or other authorities are concerned (concerning discrimination on the ground of ethnic origin but also concerning discrimination in general). Some information about pending cases is available from the Centre for Civil and Human Rights, an NGO active in the field, which is either providing legal representation, or is the claimant itself (in cases initiated by *actio popularis* – e. g. on segregation of Roma children in education, or on segregation of Roma women in maternity wards).

In the author's view, the general trends and patterns for cases brought by Roma (in the majority of the cases represented by the Centre for Civil and Human Rights) in 2018 (but also in the previous years) remain the following:

- Extreme amount of barriers Roma people face in order to access courts, independent legal action by Roma people discriminated against is basically non-existent if assistance is not provided by NGOs.
- General reluctance of courts to determine discrimination based on ethnic origin, and if this is the case, the application of reversed burden of proof continues to fall short of a legal consistency, extreme reluctance to award financial compensation for non-pecuniary damages; if compensation is awarded, it is generally symbolic.
- The courts tend to downplay the seriousness of discrimination, overlooking or not understanding its prima facie impact on human dignity. In some instances, there remains a certain bias or preoccupation of courts, particularly when dealing with cases of discrimination against the Roma minority.
- Extreme length of the judicial proceedings and extreme endurance required on the side of the complainants and their legal representatives to carry on with the proceedings; lack of engagement of the Slovak National Centre for Human Rights (the equality body) to deal with ethnicity-based discrimination efficiently.⁴³⁸

In contrast, and to some extent paradoxically, the fact that there are so many barriers in access to judicial (but also other) remedies with regard to the right to non-discrimination in general (i.e. also with regard to grounds other than ethnicity) and cases brought to courts are so scarce, means that the decided cases on ethnic discrimination – the majority of the cases initiated and represented/assisted by the Centre for Civil and Human Rights – represent a very significant source of interpretation of the current legislation.

⁴³⁸ For more information on the current situation regarding access to justice in cases of discrimination see also Centre for Civil and Human Rights (2016), *Written comments for the UN Human Rights Committee concerning the fourth periodic report of Slovak republic*, September 2016, pp. 4-6. Available at <https://www.poradna-prava.sk/en/documents/we-submitted-the-written-comments-to-the-un-human-rights-committee/>. Centre for Civil and Human Rights (2017), *Alternative report concerning eleventh and twelfth periodic report of Slovakia for the UN Committee on the Elimination of Racial Discrimination*, October 2017, pp. 6-8. Available at <https://www.poradna-prava.sk/en/documents/the-report-for-the-un-committee-on-the-elimination-of-racial-discrimination/>.

ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

The **main transposition and anti-discrimination legislation** at both federal and federated/provincial level.

Country: Slovakia
Date: 31 December 2018

Title of the law: Act No. 365/2004 on Equal Treatment in Certain Areas and Protection Against Discrimination (Anti-discrimination Act)

(zákon č. 365/2004 Z. z. o rovnakom zaobchádzaní v niektorých oblastiach a o ochrane pred diskrimináciou a o zmene a doplnení niektorých zákonov (antidiskriminačný zákon))

Date of adoption: 20.05.2004

Latest relevant amendment: 12.11.2015 (No. 378/2015)

Entry into force: 01.07.2004

Web link: <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2004/365/20160102?ucinnost=31.12.2018>;
http://www.snslp.sk/CCMS/files/AntidiskriminacnyZakon_ENG-1.1.2015.pdf (English version)

Grounds covered: sex, religion or belief, race, affiliation with a nationality (*národnosť*) or an ethnic group, disability, age, sexual orientation, marital status and family status, colour of skin, language, political or other opinion, national or social origin, property, lineage/gender or other status, or the reason of reporting criminality or other anti-social activity, contained in Section 2(1) of the Anti-discrimination Act (as well as some other grounds contained in some other acts, mainly trade union involvement and unfavourable state of health, contained, for example, in the Labour Code)

Civil/administrative/criminal law: civil and to some extent also administrative

Material scope: employment and occupation, social security, social advantages, healthcare, provision of goods and services including housing and education

Principal content: the basic act transposing the directives

Title of the law: Labour Code No. 311/2001

(zákon č. 311/2001 Z. z. Zákonník práce)

Date of adoption: 02.07.2001

Latest relevant amendment: 14.2.2018 (No. 63/2018)

Entry into force: 01.04.2002

Web link: <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2001/311/20190101?ucinnost=31.12.2018>;
<http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/61871/60966/F-506442866/SVK61871.pdf> (English version)

Grounds covered: sex, religion or belief, race, affiliation with nationality (*národnosť*) or an ethnic group, disability, age, sexual orientation, marital status and family status, colour of skin, language, political or other opinion, national or social origin, property, lineage/gender or other status, or the reason of reporting criminality or other anti-social activity, contained in Section 2(1) of the Anti-discrimination Act as well as trade union involvement, unfavourable state of health and genetic features

Civil/administrative/criminal law: civil

Material scope: employment

Principal content: labour relations in private employment and in parts of public employment

Title of the law: Act No. 55/2017 on Civil Service, as amended (zákon č. 55/2017 Z. z. o štátnej službe a o zmene a doplnení niektorých zákonov)

Abbreviation:

Date of adoption: 01.02.2017

Latest relevant amendment: 14.2.2018 (No. 63/2018)

Entry into force: 01.01.2018

| |
|---|
| <p>Web link https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2017/55/20190301?ucinnost=31.12.2018</p> <p>Grounds covered: all grounds covered by the Anti-discrimination Act as well as unfavourable state of health, duties to family, membership of or involvement in a political party or a political movement, a trade union or another association</p> <p>Civil/administrative/criminal law: civil, administrative</p> <p>Material scope: employment</p> <p>Principal content: labour relations in public service</p> |
| <p>Title of the law: Act No. 245/2008 on Education (Schools Act) (<i>zákon č. 245/2008 Z. z. o výchove a vzdelávaní (školský zákon) a o zmene a doplnení niektorých zákonov</i>)</p> <p>Abbreviation:</p> <p>Date of adoption: 22.05.2008</p> <p>Latest relevant amendment: 20.06.2017 (No. 182/2017)</p> <p>Entry into force: 01.09.2008</p> <p>Web link https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2008/245/20190102?ucinnost=31.12.2018</p> <p>Grounds covered: all grounds covered by the Anti-discrimination Act as well as social disadvantage</p> <p>Civil/administrative/criminal law: administrative</p> <p>Material scope: education</p> <p>Principal content: legal relations in pre-school, primary and secondary education</p> |
| <p>Title of the law: Act No. 131/2002 on Higher Education, as amended</p> <p>Abbreviation:</p> <p>Date of adoption: 21.02.2002</p> <p>Latest relevant amendment: 11.9.2018 (No. 270/2018)</p> <p>Entry into force: 01.04.2002</p> <p>Web link: https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2002/131/20190101?ucinnost=31.12.2018</p> <p>Grounds covered: sex, religion or belief, race, affiliation with a nationality (<i>národnosť</i>) or an ethnic group, disability, age, sexual orientation, marital status and family status, colour of skin, language, political or other opinion, national or social origin, property, lineage/gender or other status, or the reason of reporting criminality or other anti-social activity contained in Section 2(1) of the Anti-discrimination Act</p> <p>Civil/administrative/criminal law: administrative</p> <p>Material scope: education</p> <p>Principal content: legal relations in university education</p> |
| <p>Title of the law: Act No. 576/2004 on Healthcare, Services Related to the Provision of Healthcare and on amending and supplementing certain acts, as amended (<i>zákon č. Act No. 576/2004 Z. z. o zdravotnej starostlivosti, službách súvisiacich s poskytovaním zdravotnej starostlivosti a o zmene a doplnení niektorých zákonov</i>)</p> <p>Abbreviation:</p> <p>Date of adoption: 21.10.2004</p> <p>Latest relevant amendment: 13.09.2018 (No. 287/2018)</p> <p>Entry into force: 01.01.2005</p> <p>Web link: https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2004/576/20190101?ucinnost=31.12.2018</p> <p>Grounds covered: sex, religion or belief, race, affiliation with a nationality (<i>národnosť</i>) or an ethnic group, disability, age, sexual orientation, marital status and family status, colour of skin, language, political or other opinion, national or social origin, property, lineage/gender or other status, or the reason of reporting criminality or other anti-social activity, contained in Section 2(1) of the Anti-discrimination Act</p> <p>Civil/administrative/criminal law: administrative</p> <p>Material scope: healthcare</p> |

| |
|--|
| Principal content: legal relations in providing healthcare |
| <p>Title of the law: Act No. 461/2003 on Social Insurance, as amended (<i>zákon č. 461/2003 Z. z. o sociálnom poistení v znení neskorších predpisov</i>)</p> <p>Abbreviation:</p> <p>Date of adoption: 30.10.2003</p> <p>Latest relevant amendment: 04.12.2018 (No. 366/2018)</p> <p>Entry into force: 01.01.2004</p> <p>Web link: https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2003/461/20190301?ucinnost=31.12.2018</p> <p>Grounds covered: sex, religion or belief, race, affiliation with a nationality (<i>národnosť</i>) or an ethnic group, disability, age, sexual orientation, marital status and family status, colour of skin, language, political or other opinion, national or social origin, property, lineage/gender or other status, or the reason of reporting criminality or other anti-social activity, contained in Section 2(1) of the Anti-discrimination Act</p> <p>Civil/administrative/criminal law: administrative</p> <p>Material scope: social security</p> <p>Principal content: legal relations in state social insurance</p> |
| <p>Title of the law: Act No. 43/2004 on Old-Age Pension Saving and amending and supplementing certain laws, as amended (<i>zákon č. 43/2004 Z. z. o starobnom dôchodkovom sporení a o zmene a doplnení niektorých zákonov</i>)</p> <p>Abbreviation:</p> <p>Date of adoption: 20.01.2004</p> <p>Latest relevant amendment: 15.05.2018 (No. 177/2018)</p> <p>Entry into force: 01.01.2004</p> <p>Web link: https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2004/43/20190101?ucinnost=31.12.2018</p> <p>Grounds covered: sex, religion or belief, race, affiliation with a nationality (<i>národnosť</i>) or an ethnic group, disability, age, sexual orientation, marital status and family status, colour of skin, language, political or other opinion, national or social origin, property, lineage/gender or other status, or the reason of reporting criminality or other anti-social activity, contained in Section 2(1) of the Anti-discrimination Act</p> <p>Civil/administrative/criminal law: civil, administrative</p> <p>Material scope: social security</p> <p>Principal content: old-age pension saving</p> |
| <p>Title of the law: Act No. 650/2004 on Supplementary Pension Saving and on Amending and Supplementing Certain Laws, as amended (<i>zákon č. 650/2004 Z. z. o doplnkovom dôchodkovom sporení a o zmene a doplnení niektorých zákonov</i>)</p> <p>Abbreviation:</p> <p>Date of adoption: 26.10.2014</p> <p>Latest relevant amendment: 15.5.2018 (No. 177/2018)</p> <p>Entry into force: 01.01.2005</p> <p>Web link: https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2004/650/20190101?ucinnost=31.12.2018</p> <p>Grounds covered: sex, religion or belief, race, affiliation with a nationality (<i>národnosť</i>) or an ethnic group, disability, age, sexual orientation, marital status and family status, colour of skin, language, political or other opinion, national or social origin, property, lineage/gender or other status, or the reason of reporting criminality or other anti-social activity, contained in Section 2(1) of the Anti-discrimination Act</p> <p>Civil/administrative/criminal law: civil, administrative</p> <p>Material scope: social security</p> <p>Principal content: supplementary pension saving (incl. occupational pensions)</p> |
| <p>Title of the law: Act No. 448/2008 on Social Services and on amending and supplementing Act No. 455/1991 on Licensed Trades (Small Business Act), as amended</p> |

(zákon č. 448/2008 Z. z. o sociálnych službách a o zmene a doplnení zákona č. 455/1991 Zb. o živnostenskom podnikaní (živnostenský zákon) v znení neskorších predpisov)

Abbreviation:

Date of adoption: 30.10.2008

Latest relevant amendment: 18.9.2018 (No. 289/2018)

Entry into force: 01.01.2009

Web link: <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2008/448/20190101?ucinnost=31.12.2018>

Grounds covered: sex, religion or belief, race, affiliation with a nationality (*národnosť*) or an ethnic group, disability, age, sexual orientation, marital status and family status, colour of skin, language, political or other opinion, national or social origin, property, lineage/gender or other status, or the reason of reporting criminality or other anti-social activity, contained in Section 2(1) of the Anti-discrimination Act as well as unfavourable social situation

Civil/administrative/criminal law: administrative

Material scope: social security

Principal content: legal relations in social services for people in need of them with regard to e.g. age or disability

Title of the law: Act No. 447/2008 on Benefits for Compensation of Serious Disability, amending and Supplementing Certain Laws, as amended (zákon č. 447/2008 o peňažných príspevkoch na kompenzáciu ťažkého zdravotného postihnutia a o zmene a doplnení niektorých zákonov)

Abbreviation:

Date of adoption: 29.10.2008

Latest relevant amendment: 13.06.2018 (No. 191/2018)

Entry into force: 01.01.2009

Web link: <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2008/447/20180701?ucinnost=31.12.2018>

Grounds covered: sex, religion or belief, race, affiliation with a nationality (*národnosť*) or an ethnic group, disability, age, sexual orientation, marital status and family status, colour of skin, language, political or other opinion, national or social origin, property, lineage/gender or other status, or the reason of reporting criminality or other anti-social activity, contained in Section 2(1) of the Anti-discrimination Act

Civil/administrative/criminal law: administrative

Material scope: social security

Principal content: legal rules for providing benefits for compensation of serious disability

Title of the law: Act No. 308/1993 on Establishing the Slovak National Centre for Human Rights (zákon č. 308/1993 Z. z. o zriadení Slovenského národného strediska pre ľudské práva)

Abbreviation:

Date of adoption: 15.12.1993

Latest relevant amendment: 25.06.2015 (No. 176/2015)

Entry into force: 01.01.1994

Web link: <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1993/308/20190101?ucinnost=31.12.2018>

Grounds covered: all grounds covered by national law: sex, religion or belief, race, affiliation with nationality (*národnosť*) or an ethnic group, disability, age, sexual orientation, marital status and family status, colour of skin, language, political or other opinion, national or social origin, property, lineage/gender or other status, contained in Section 2(1) of the Anti-discrimination Act as well as some other grounds contained in other acts (unfavourable state of health, genetic features, duties to family, membership of or involvement in a political party or a political movement, a trade union or other association)

Civil/administrative/criminal law: administrative

Material scope: employment and occupation, social security, social advantages, healthcare, provision of goods and services including housing and education
Principal content: rules on obligations and the functioning of the equality body

Title of the law: Act No. 160/2015 Civil Dispute Act

(*zákon č. 160/2015 Z. z. Civilný sporový poriadok*)

Abbreviation: CSP (*Civilný sporový poriadok*)

Date of adoption: 21.05.2015

Latest relevant amendment: 04.12.2018 (No. 350/2018)

Entry into force: 01.07.2016

Web link: <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2015/160/20181212?ucinnost=31.12.2018>

Grounds covered: sex, religion or belief, race, affiliation with a nationality or an ethnic group, disability, age, sexual orientation, marital status and family status, colour of skin, language, political or other opinion, national or social origin, property, lineage/gender or other status, or the reason of reporting criminality or other anti-social activity, contained in Section 2(1) of the Anti-discrimination Act (and some other grounds contained in some other acts, mainly trade union involvement, unfavourable state of health and genetic features, contained, for example, in the Labour Code)

Civil/administrative/criminal law: civil

Material scope: employment and occupation, social security, social advantages, healthcare, provision of goods and services including housing and education

Principal content: rules of civil dispute proceedings before courts

Title of the law: Act No. 162/2015 Administrative Judicial Act (*zákon č. 162/2015 Z. z. Správny súdny poriadok*)

Abbreviation: SSP (*Správny súdny poriadok*)

Date of adoption: 21.05.2015

Latest relevant amendment: 28.03.2017 (No.88/2017)

Entry into force: 01.07.2016

Web link: <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2015/162/20190101?ucinnost=31.12.2018>

Grounds covered: sex, religion or belief, race, affiliation with a nationality or an ethnic group, disability, age, sexual orientation, marital status and family status, colour of skin, language, political or other opinion, national or social origin, property, lineage/gender or other status, or the reason of reporting criminality or other anti-social activity, contained in Section 2(1) of the Anti-discrimination Act (and some other grounds contained in some other acts, mainly trade union involvement, unfavourable state of health and genetic features, contained, for example, in the Labour Code)

Civil/administrative/criminal law: civil

Material scope: employment and occupation, social security, social advantages, healthcare, provision of goods and services including housing and education

Principal content: rules of civil proceedings in administrative matters before courts

ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

Country: Slovakia

Date: 31 December 2018

| Instrument | Date of signature | Date of ratification | Derogations / reservations relevant to equality and non-discrimination | Right of individual petition accepted? | Can this instrument be directly relied upon in domestic courts by individuals? |
|--|--------------------------|-----------------------------|--|--|---|
| European Convention on Human Rights (ECHR) | Signed 21.02.1991 | Ratified 18.03.1992 | No | Yes | Yes |
| Protocol 12, ECHR | Signed 04.11.2000 | Not ratified | No | No | No |
| Revised European Social Charter | Signed 18.11.1999 | Ratified 23.04.2009 | Yes Reservations applied by Slovak Republic: Article 15 Paragraph 3 Article 18 Paragraph 3 Article 19 Paragraph 2, 3, 4c, 8, 10, 12 Article 31 | Ratified collective complaints protocol? No | Yes |
| International Covenant on Civil and Political Rights | Signed 07.10.1968 | Ratified 28.05.1993 | No | Yes | Yes |
| Framework Convention for the Protection of National Minorities | Signed 01.02.1995 | Ratified 14.09.1995 | No | N/A | Yes |
| International Covenant on Economic, Social and Cultural Rights | Signed 07.10.1968 | Ratified 28.05.1993 | No | Yes | Yes |
| Convention on the Elimination of All Forms of Racial | Signed 07.10.1966 | Ratified 28.05.1993 | No | Yes | Yes |

| Instrument | Date of signature | Date of ratification | Derogations / reservations relevant to equality and non-discrimination | Right of individual petition accepted? | Can this instrument be directly relied upon in domestic courts by individuals? |
|---|--------------------------|-----------------------------|---|---|---|
| Discrimination | | | | | |
| Convention on the Elimination of Discrimination Against Women | Signed 17.07.1980 | Ratified 28.05.1993 | No | Yes | Yes |
| ILO Convention No. 111 on Discrimination | Signed 25.06.1958 | Ratified 01.01.1993 | No | N/A | Yes |
| Convention on the Rights of the Child | Signed 30.09.1990 | Ratified 28.05.1993 | No | No | Yes |
| Convention on the Rights of Persons with Disabilities | Signed 26.09.2007 | Ratified 26.05.2010 | No | Yes | Yes |

GETTING IN TOUCH WITH THE EU

In person

All over the European Union there are hundreds of Europe Direct information centres. You can find the address of the centre nearest you at: https://europa.eu/european-union/contact_en.

On the phone or by email

Europe Direct is a service that answers your questions about the European Union. You can contact this service: – by freephone: 00 800 6 7 8 9 10 11 (certain operators may charge for these calls), – at the following standard number: +32 22999696, or – by email via: https://europa.eu/european-union/contact_en.

FINDING INFORMATION ABOUT THE EU

Online

Information about the European Union in all the official languages of the EU is available on the Europa website at: https://europa.eu/european-union/index_en.

EU publications

You can download or order free and priced EU publications from: <https://publications.europa.eu/en/publications>. Multiple copies of free publications may be obtained by contacting Europe Direct or your local information centre (see https://europa.eu/european-union/contact_en).

EU law and related documents

For access to legal information from the EU, including all EU law since 1952 in all the official language versions, go to EUR-Lex at: <http://eur-lex.europa.eu>.

Open data from the EU

The EU Open Data Portal (<http://data.europa.eu/euodp/en>) provides access to datasets from the EU. Data can be downloaded and reused for free, for both commercial and non-commercial purposes.

